

19 JUNE 1947

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of
WITNESSES

Defense' witnesses

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Kretschmer, Alfred F. (resumed)

24658

Redirect by Mr. Cunningham

24658

(Witness excused)

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Of
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1 Thursday, 19 June 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, all Members sitting, with
14 the exception of: HONORABLE JUSTICE E. H. NORTHCROFT,
15 Member from the Dominion of New Zealand, not sitting
16 from 0930 to 1530; HONORABLE JUSTICE E. STUART
17 McDOUGALL, Member from the Dominion of Canada, not
18 sitting from 1100 to 1530 and HONORABLE JUSTICE JU-AO
19 MEI, Member from the Republic of China, not sitting
20 from 1500 to 1530.

21 For the Prosecution Section, same as before.

22 For the Defense Section, same as before.

23 - - -

24 (English to Japanese and Japanese
25 to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Tribunal for the Far East is now in session.

3 THE PRESIDENT: The accused TOGO is, with
4 the permission of the Tribunal, conferring with
5 his counsel and will continue to do so until the
6 end of this session at noon today.

7 Mr. Cunningham.

8 MR. CUNNINGHAM: Your Honor, before we
9 start with the re-direct examination of this witness
10 I want to call your attention to page 24,575 of the
11 record yesterday and make a correction, in the
12 middle of that page, page 24,575. I am quoting
13 the President: "You said they were statements
14 made to prosecuting officers although before any
15 charge was made. That's enough."

16 I want to state that I had been misquoted
17 there, that I did not say that statement, and I
18 refer you back to the previous page. Apparently
19 you, and perhaps other Members of the Tribunal,
20 were under misapprehension in ruling on those
21 documents. The documents 1437, 1438 and 1439
22 were not made to prosecuting attorneys or members
23 of the staff; they were made to the son of MATSUOKA.
24 I had no opportunity to correct the misapprehension
25 at that time, but I wanted to be sure before I

1 called it to your attention, what the true state of
2 the record was.

3 THE PRESIDENT: What you said is open to
4 both constructions, obviously, but we accept your
5 correction.

6 MR. CUNNINGHAM: Then, in the light of the
7 correction, I suggest a reconsideration of the ruling,
8 and I should like to argue the documents because I
9 did not have an opportunity to answer the objection
10 of the prosecutor yesterday.

11 THE PRESIDENT: In all events, it is one
12 of those self-serving statements, made after the
13 prosecution was well under way, although not
14 formerly launched, isn't that so? In that respect
15 it differs from the statement of KONOYE, which was
16 made during the war. However, it is for the Tribu-
17 al to say whether they will take into account the
18 technical difference which is now revealed by your
19 further explanation. I make no pronouncement about
20 it, Mr. Cunningham.

21 MR. CUNNINGHAM: I should like, your Honor ,
22 to at least answer the objection of the prosecutor
23 to that document and to show the distinct difference.
24 And I wish to state that your observation on the doc-
25 ument is not in any way similar to my observation

1 about it.

2 THE PRESIDENT: If you like to address us
3 in obscure, equivocal language, well, you take the
4 risk of being misunderstood, but we accept your
5 correction today. It appears now from what you
6 say that this statement of MATSUOKA'S was made to
7 his son in January 1946, after the prosecution of
8 alleged Japanese war criminals was decided upon
9 and when the prosecution were fully represented and
10 were here in Tokyo. The statement was, in fact,
11 made to a prosecuting officer. Is that the posi-
12 tion, Mr. Cunningham?

13 MR. CUNNINGHAM: No, your Honor, that is
14 not the position.

15 THE PRESIDENT: Well, that is the most
16 favorable construction that can be put on what you
17 said yesterday.

18 MR. CUNNINGHAM: Well, of course, this is
19 developing into one-sided. If I may have just five
20 minutes to explain my position, I think it will not
21 be ambiguous or obscure.

22 THE PRESIDENT: It should not take five
23 minutes, but we will hear it.

24 MR. CUNNINGHAM: I refer you to the previous
25 page of this record and I can see nothing ambiguous

1 or obscure about the presentation which I made of
2 this document.

3 On the second proposition of whether or
4 not this defendant made -- the accused MATSUOKA
5 made this statement as a self-serving declaration,
6 I am convinced that he made that statement for
7 history, and in the wildest stretch of his imagin-
8 ation I feel that he was not considering himself a
9 war criminal under the Potsdam Declaration.

10 THE PRESIDENT: We do not want your convic-
11 tions. All we want is a simple statement of the
12 facts bearing on this statement, and unless you
13 give them, and give them at once, we won't hear
14 another word from you. We have asked you to make
15 a simple statement of the facts. If you are not
16 prepared to do that we won't hear you. We are not
17 obliged to accept from you any more than a simple
18 statement of the facts. You make submissions to us;
19 you do not tell us what your convictions are. No
20 lawyer does that.

21 MR. CUNNINGHAM: I should like to go to
22 the second point which your Honor made, and that is,
23 that the statement was made after the prosecution
24 had arrived in Tokyo. That has no bearing, as I
25 see it, because the prosecution of war criminals

1 and war crimes had no bearing upon the relations
2 of MATSUOKA to his son, and the statement he was
3 making for historical purposes.

4 On the third proposition, you must be aware
5 that the Indictment in this case, charging the
6 accused, was not entered for months after this
7 statement was made, and there can be no connection.

8 THE PRESIDENT: Proceed. There is nothing
9 to prevent you.

10 MR. CUNNINGHAM: On the following proposition,
11 if I had been permitted to answer yesterday, as I
12 think I had the right to do, to answer the objec-
13 tions of the prosecution on these specific documents,
14 these are the observations I would have made at
15 the time.
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1 THE PRESIDENT: Calling it sacred won't
2 make it admissible. When was he first approached
3 by the prosecution? No doubt he expected the ap-
4 proach before it was made.

5 MR. CUNNINGHAM: That is an assumption,
6 your Honor, and I understand that he was approached
7 by the prosecution some time in February of 1946,
8 after this document had been completed, long after.
9 I believe the original interrogation is in the hands
10 of the clerk here, 1643, parent document.

11 Those are my observations on the matter,
12 your Honor, and I submit that the matter should be
13 given more serious consideration because I believe,
14 in my presentation of these documents, that anything
15 that Yosuke MATSUOKA said in explanation of the Tri-
16 Partite Pact, no matter when he said it, is of the
17 most relevant material and consequence of any docu-
18 ment to be offered in this Tribunal.

19 One last sentence. Yosuke MATSUOKA was
20 the Foreign Minister of Japan at one of the most
21 crucial periods in the history of the nation.

22 THE PRESIDENT: Having heard you fully again,
23 a majority of the Tribunal are convinced that they
24 should adhere to their decision.

25 MR. CUNNINGHAM: I will now proceed with the

KRETSCHMER

REDIRECT

1 redirect examination of the witness.

2 - - -

3 A L F R E D F. K R E T S C H M E R, called as
4 a witness on behalf of the defense, resumed the
5 stand and testified as follows:

6 REDIRECT EXAMINATION

7 BY MR. CUNNINGHAM:

8 Q General Kretschmer, yesterday Mr. Tavenner
9 completed his cross-examination. Now I ask you,
10 what were your instructions, when you came to Tokyo,
11 from the German Foreign Office?

12 A I had no special instructions. My task
13 here was quite the same as the task of every mili-
14 tary attache, whatever nation he may belong to.

15 Q At any time, General, prior to the Pearl
16 Harbor attack, did you have any intimation that a war
17 was imminent between the United States and Japan?

18 MR. TAVENNER: If the Tribunal please, ob-
19 jection is made to this question inasmuch as it is the
20 same question that he covered in his direct examina-
21 tion, and nothing new -- please strike the words
22 "and nothing new" -- and I desired to add that it is
23 mere repetition.

24 MR. CUNNINGHAM: I merely wanted to correct
25 any confusion that might have been created by the

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22 "and nothing new" -- and I desired to add that it is
23 mere repetition.

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25 any confusion that might have been created by the

KRETSCHMER

REDIRECT

cross-examination by Mr. Tavenner on that subject.

1 THE PRESIDENT: That does not warrant him
2 repeating what he said in examination in chief.
3 The objection is upheld and the question disallowed.
4

5 MR. CUNNINGHAM: That was a forerunner to
6 the next question.

7 Q In what manner did you learn of the attack
8 on Pearl Harbor?

9 A The morning after this attack I was in-
10 structed by, as far as I remember, Lieutenant Colonel
11 AKITA that the Japanese attack had been started
12 against the different strategical aims known to every-
13 one here.

14 Q In what manner were you engaged around
15 and about the time the Pearl Harbor attack occurred?

16 THE PRESIDENT: Mr. Tavenner.

17 MR. TAVENNER: If it please the Tribunal,
18 objection is made to this line of redirect examina-
19 tion in that it does not relate to a matter that
20 in any way arises out of cross-examination. There
21 was no mention at any time of any matter relating to
22 what occurred on the day of the Japanese attack on
23 Pearl Harbor.

24 MR. CUNNINGHAM: As I understood the prose-
25 cution's cross-examination, they tried to show that

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1 the Embassy here knew long before the hostilities
2 commenced that they would be commenced.

3 THE PRESIDENT: What I cannot see is how
4 what he happened to be doing on that occasion could
5 throw any light on his knowledge.

6 MR. CUNNINGHAM: I thought I would let the
7 witness enlighten you on that instead of my enlighten-
8 ing you, your Honor. The witness was entertained by
9 the Japanese authorities at the time to prevent him from
10 knowing what was going on, if you want me to suggest
11 to you.

12 THE PRESIDENT: The question is disallowed
13 as irrelevant.

14 Q Then may I ask this question: Did the
15 Japanese officials take any action to prevent you
16 from knowing that the attack on Pearl Harbor was
17 being made?

18 A Japanese authorities didn't give us any know-
19 ledge at all and especially at this time they proposed
20 for us traveling, I don't know for what places. Those
21 of us who were in Tokyo were invited this evening
22 first to the Kabuki, afterwards to a dinner which
23 lasted perhaps until ten o'clock in the evening.

24 Q I will pass that now. By what means could
25 you communicate with Germany after December 9, 1941?

1 THE PRESIDENT: Mr. Tavenner.

2 MR. TAVENNER: Objection is made, if the
3 Tribunal please, on the ground that this is not re-
4 direct examination arising out of anything that
5 occurred during cross-examination.

6 MR. CUNNINGHAM: Your Honor, if I remember
7 correctly, Mr. Tavenner specifically went into the
8 question of the reports which this witness made to his
9 government as a result of his trip through the South
10 in 1942.

11 THE PRESIDENT: But Mr. Tavenner brought out
12 nothing bearing on this matter of the way the witness
13 communicated with his government. Such a matter may,
14 perhaps, have been brought out by you in direct exam-
15 ination but redirect examination, I need hardly say,
16 must be on matters brought out by the cross-examination
17 and to clear up obscurities or uncertainties created
18 by the cross-examination, and this particular matter
19 was not adverted to in the cross-examination either
20 directly or indirectly.

21 MR. CUNNINGHAM: Your Honor, if there is no
22 misunderstanding that this witness had difficulty in
23 communicating with his government and that he had to
24 use the ordinary channels of communication, and so on,
25 I would like to find out from the witness just how he

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REDIRECT

1 communicated these reports which he made, in answer
2 to the question of the prosecutor, to his government.

3 THE PRESIDENT: We can allow you to do that
4 only if we disregard the rules agreed upon by yourself
5 and which must be applied to all counsel without dis-
6 crimination.

7 MR. CUNNINGHAM: When the rules interfere
8 with the discovery of the facts I say suspend the
9 rules.

10 THE PRESIDENT: At all events, for Mr. Cunning-
11 ham's benefit, the objection is upheld and the question
12 disallowed.

13 MR. CUNNINGHAM: All right. Now the next
14 question.

15 Q General, did anyone from the Japanese General
16 Staff ever talk with you about operational plans after
17 the outbreak of the Pacific War?

18 THE PRESIDENT: Mr. Tavenner.

19 MR. TAVENNER: If the Tribunal please, that
20 was matter covered by the examination in chief and the
21 only purpose now is to attempt to have this witness
22 repeat his testimony.

23 MR. CUNNINGHAM: I understood that the prose-
24 cution tried to intimate that there was an operational
25 plan in existence and that it was functioning. If they

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1 deny that then there is no sense in asking the
2 question.

3 THE PRESIDENT: The objection is upheld.

4 Q Did you or any of the members of your staff
5 make investigations concerning the Japanese war
6 potential before Pearl Harbor?

7 A We wished to know but we could not receive
8 any dates from the Japanese side.

9 Q By "dates" do you mean "data"?

10 A I beg your pardon, I could not--

11 Q By "dates" do you mean "data"?

12 A I mean data. I am not a master of your
13 language.

14 Q What was the nature of your reports on your
15 trip South in 1942, General?

16 A Strategical and especially technical questions.
17 For instance, the technique of Japanese landings and
18 defense against them; the technique of night attacks
19 and the defense against them.
20

21 Q Did your reports include anything that was
22 going to happen?

23 A I never received from the Japanese sides any
24 news of what would happen, therefore my reports dealt
25 with what had happened or what I supposed that it
might happen.

KRETSCHMER

REDIRECT

1 Q Are the air and naval attaches whom you
2 mentioned yesterday still in Japan?

3 A The naval attache living at Karuizawa; the
4 air attache at Hakone.

5 Q In your communications did you communicate
6 with Germany through the ambassador or directly with
7 your superior officers?

8 A The normal way for my cables was through the
9 ambassador. Besides this I had the chance to send
10 military telegrams which had been shut up by my own
11 office.

12 Q Now the last few questions: When did Ambassador
13 Ott leave Japan?

14 A He left in spring, 1943.

15 Q Do you know where he is at the present time?

16 A As far as I know, in Peking.

17 Q General, you stated yesterday in answering
18 Mr. Tavenner's question that Mr. Wohltat and his
19 economic mission arrived in Japan sometime before the
20 outbreak of the German-Russian war. Had this mission,
21 as far as you know, anything to do with the military
22 agreement which was concluded much later, namely, in
23 January 1942?

24 A I don't know of any connection between this
25 Wohltat commission and the Tri-Partite Pact.

1 MR. CUNNINGHAM: That concludes the redirect.
2 Mr. Howard has a statement to make to the Tribunal
3 before the witness is released.

4 THE PRESIDENT: Mr. Howard.

1 MR. HOWARD: May it please the Tribunal,
2 I should like to inform the Tribunal that the de-
3 fense expects to use General KRETSCHMER as a wit-
4 ness on two or three more occasions during the trial.
5 We ask that he be presently released but in the
6 custody of the Supreme Commander, subject to being
7 recalled as needed.

8 THE PRESIDENT: Before we make an order
9 we want to be sure of the need for its terms.
10 What is the reference to the "custody of the
11 Supreme Commander" due to? We understood from
12 Mr. Cunningham yesterday that this man was at
13 liberty now.

14 MR. HOWARD: Your Honor, he is under
15 subpoena, but he lives in Itami, and rather than
16 state in here that he be required to remain in
17 Tokyo I stated "in the custody of the Supreme Com-
18 mander." However, that request, "in the custody
19 of the Supreme Commander," that really is not
20 important so far as I am concerned.

21 THE PRESIDENT: He is released on the
22 usual terms.

23 (Whereupon, the witness
24 was excused.)

25 THE PRESIDENT: Mr. Cunningham.

1 MR. CUNNINGHAM: Next, I would like to
2 take up the relations between Japan and Soviet Russia
3 after the conclusion of the Tri-Partite Pact.

4 I first call to the Court's attention
5 Article V of the Tri-Partite Pact which says: "Japan,
6 Germany and Italy affirm that the aforesaid terms do
7 not in any way affect the political status which
8 exists at present as between each of the three con-
9 tracting parties and Soviet Russia" -- exhibit 43.

10 Exhibit 2735A, Prince KONOYE's Memoir "On
11 the Tri-Partite Pact," transcript pages 24,290-24,307.

12 I next call the Court's attention to defense
13 exhibit 2735A, Memoir of Prince KONOYE "On the Tri-
14 Partite Pact," and specifically refer to KONOYE's
15 statement that one of the principal aims of the Pact
16 was the improvement of Japanese-Russian relations,
17 pages 4 and 5. The same peaceful intention of the
18 Japanese Government and understanding with Germany
19 in this regard at the time of the conclusion of the
20 Pact is also shown in prosecution's exhibits Nos.
21 549, 550, 552, and 555, transcript pages 6323
22 to 6343, 6350 to 6379, 6396 to 6399; and also on
23 13 April 1941 the Neutrality Pact between Japan and
24 Soviet Russia was concluded (exhibit No. 45).
25

I now offer in evidence defense document

1 No. 1639, a telegram sent by the German Ambassador
2 in Moscow to the German Foreign Minister in Berlin
3 on 13 April 1941, to show the cordial relations
4 between Japan and Russia at the time of the con-
5 clusion of the Neutrality Pact, that is, more than
6 half one year after the conclusion of the Tri-
7 Partite Pact.

8 THE PRESIDENT: Brigadier Nolan.

9 BRIGADIER NOLAN: May it please the
10 Tribunal, with this document the point has arisen
11 that, although on its face a document may be ad-
12 missible, having no probative value it becomes in-
13 admissible before this Tribunal. In paragraph 1 we
14 find a German diplomat, Schulenburg, informing the
15 Foreign Minister what the Italian Ambassador had
16 told him that MATSUOKA -- what MATSUOKA had informed
17 the Italian Ambassador was contained in a letter
18 from MATSUOKA to Molotov. In the second paragraph
19 we find the same German diplomat, Schulenburg, in-
20 forming the Foreign Minister of a question put to
21 MATSUOKA by the Italian Ambassador in Moscow con-
22 cerning a discussion which took place between
23 MATSUOKA and Stalin. The third paragraph describes
24 the scene at a railway station from which it is
25 sought to draw some conclusions upon international

relations.

1 The prosecution submits that the Tribunal
2 is entitled to better proof of the facts sought to
3 be proved by this document and that it should be
4 rejected in its entirety.
5

6 MR. CUNNINGHAM: Your Honor, the Russian
7 prosecution has asserted that the Tri-Partite
8 Pact was aimed at them. This answers in some
9 respect that allegation. You cannot possibly
10 determine the probative value of this document
11 by reading it isolated from all other powerful
12 political documents which preceded it and which
13 come later.

14 THE PRESIDENT: What bearing has it on
15 Soviet-Japanese relations? It has some bearing
16 on Soviet-German relations. Schulenburg apparently
17 was, according to him, the recipient of a cordial
18 greeting but he does not say whether what he heard
19 about MATSUOKA came to him from the Italian Ambassa-
20 dor or through somebody else. There certainly is
21 a reference to a Japanese concession at Sakhalin,
22 but how that knowledge came to Schulenburg does
23 not appear.
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1 MR. CUNNINGHAM: Well, if it appears
2 from the later documents that that same information
3 came from other sources, I think it is rather
4 immaterial how it came to Schulenburg if it is a
5 fact. And this is the best evidence of this that
6 we have available on this particular topic, aside
7 from the corroboration which comes in the later
8 documents.

9 THE PRESIDENT: At best, you are tendering
10 out of order. The only parts that bear on the issues
11 are paragraphs 1 and 2, and we do not know really
12 the source of that information.

13 MR. CUNNINGHAM: Well, let's take 1 and 2 --

14 THE PRESIDENT: There is a link missing
15 between Schulenburg and the Italian Ambassador.

16 MR. CUNNINGHAM: Well, let's take 1 and 2
17 and tie it in later with other documents and I am
18 satisfied that our proof is in order. I had hoped
19 that this short document would be read into the
20 record without many minutes of argument so that we
21 could go on to our next element of proof. It really
22 doesn't justify a half hour of all of our time.

23 THE PRESIDENT: That is the test, is it,
24 brevity? You can get the most malicious, irrelevant
25 lie in one line, sometimes.

1 By a majority the Court upholds the
2 objection and rejects the document.

3 MR. CUNNINGHAM: I now offer in evidence
4 defense documents 1698 A-H, excerpts taken from a
5 book "Tokyo Record" by Otto D. Tolischus. The
6 parent document is tendered for identification.
7 Mr. Tolischus was a correspondent of the New York
8 Times in Tokyo succeeding Mr. Byas, who is one of
9 the best experts on oriental affairs, in the crucial
10 days of 1941, and met often with responsible people
11 of Japanese public life. His observations will
12 undoubtedly help the Tribunal in understanding the
13 atmosphere of Japan at that time. I might add that
14 Mr. Tolischus had been expelled from Germany on
15 account of his anti-Nazi correspondence before he
16 came to Japan. I will offer the first one first
17 and I want to offer them individually for what each
18 one represents.

19 I now offer defense document 1698-A as
20 a preliminary document to show the approach of Mr.
21 Tolischus to Japan.

22 THE PRESIDENT: Brigadier Nolan.

23 BRIGADIER NOLAN: If it please the Tribunal,
24 to say that this document has no probative value
25 would be to flatter it. In the submission of the

1 prosecution, it has no value whatsoever in this
2 case.

3 THE PRESIDENT: A Colleague regards it
4 as an insult to the Court to tender such a document.

5 MR. CUNNINGHAM: Your Honor, that is a
6 sharp difference of opinion.

7 THE PRESIDENT: The objection is upheld
8 and the document rejected.

9 MR. CUNNINGHAM: I now offer in evidence
10 defense document 1698-B, an excerpt from the same
11 book, for the purpose of showing the approach
12 of Mr. Tolischus to the Tokyo atmosphere when he
13 arrived.

14 THE PRESIDENT: Brigadier Nolan.
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1 BRIGADIER NOLAN: If it please the Tribunal,
2 if that be the purpose for which this document is
3 offered, I submit it ought to be rejected out of hand.
4 I submit that the approach of the author to the Tokyo
5 atmosphere does not concern this Tribunal.

6 So far as the document itself is concerned,
7 it is pure journalism, an account of a conversation
8 at a luncheon party. If it had appeared in a news-
9 paper, we submit it would have been rejected, and the
10 fact that it appears in a book adds nothing to its
11 probative value.

12 THE PRESIDENT: We note that MATSUOKA played
13 with his moustache.

14 MR. CUNNINGHAM: Well, that was a character-
15 istic of MATSUOKA. Your Honor, he also engaged in
16 power politics, which is the subject at hand here
17 for investigation, and I think that what MATSUOKA
18 said to the reporter of the New York Times was making
19 history at that time contemporaneously with the happen-
20 ing of these great historic events.

21 THE PRESIDENT: I notice, too, that obser-
22 vations of MATSUOKA did nothing more than draw smiles
23 from the people who heard them, including this man.
24 We are asked to believe what they found incredible.

25 MR. CUNNINGHAM: No, your Honor --

1 BRIGADIER NOLAN: If it please the Tribunal,
2 if that be the purpose for which this document is
3 offered, I submit it ought to be rejected out of hand.
4 I submit that the approach of the author to the Tokyo
5 atmosphere does not concern this Tribunal.

6 So far as the document itself is concerned,
7 it is pure journalism, an account of a conversation
8 at a luncheon party. If it had appeared in a news-
9 paper, we submit it would have been rejected, and the
10 fact that it appears in a book adds nothing to its
11 probative value.

12 THE PRESIDENT: We note that MATSUOKA played
13 with his moustache.

14 MR. CUNNINGHAM: Well, that was a character-
15 istic of MATSUOKA. Your Honor, he also engaged in
16 power politics, which is the subject at hand here
17 for investigation, and I think that what MATSUOKA
18 said to the reporter of the New York Times was making
19 history at that time contemporaneously with the happen-
20 ing of these great historic events.

21 THE PRESIDENT: I notice, too, that obser-
22 vations of MATSUOKA did nothing more than draw smiles
23 from the people who heard them, including this man.
24 We are asked to believe what they found incredible.

25 MR. CUNNINGHAM: No, your Honor --

1 THE PRESIDENT: If this is admitted at all
2 it must be for what MATSUOKA said bearing on issues,
3 and one of those things the people who heard him did
4 not believe.

5 MR. CUNNINGHAM: Well, your Honor, what
6 MATSUOKA said about the Tripartite Pact in this second
7 page seems to hit right on the nose what we are try-
8 ing to show here and he said it then, he said it
9 again and again and again, and he wasn't making
10 people smile later on when he said it.

11 THE PRESIDENT: Why should all these irrelevan-
12 cies be read into the record? There may be a statement
13 of fact here and there, but why put in all this rub-
14 bish?

15 MR. CUNNINGHAM: Your Honor, that is the ob-
16 servation I made when you were admitting the prosecu-
17 tion's evidence, but I had no control over that.

18 THE PRESIDENT: That is not so. The prosecu-
19 tion read their material down to what was relevant
20 and material, and we saw to it.

21 MR. CUNNINGHAM: Your Honor, if you will read
22 my objections then you will see they are just exactly
23 the same contentions as I contend now. I ask that
24 parts be read into the record, on page 2, about what
25 MATSUOKA said about the writing of the Tripartite Pact.

1 Now, he didn't say that to anybody else in the world
2 probably, that one statement he made to this reporter,
3 and that specific language was probably the only utter-
4 ance MATSUOKA ever made exactly stating those particu-
5 lar words, and that is what I would like to have in
6 the record.

7 THE PRESIDENT: By a majority the Court up-
8 holds the objection in part, but it admits the docu-
9 ment on the usual terms to this extent only: that
10 part on page 2 commencing with the words "What about
11 the alliance?" down to the end of the document.

12 MR. CUNNINGHAM: I would like to read it
13 after the recess.

14 CLERK OF THE COURT: Defense document 1698,
15 being the Tokyo Record, will receive exhibit No.
16 2752, and the excerpt therefrom will receive exhibit
17 No. 2752-A.

18 (Whereupon, the document above referred
19 to was marked defense exhibit 2752; the excerpt
20 therefrom being marked defense exhibit 2752-A.
21 and received in evidence.)

22 THE PRESIDENT: We will recess for fifteen
23 minutes.

24 (Whereupon, at 1049, a recess was
25 taken until 1100, after which the proceedings
were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: I now offer to read exhibit
5 2752-A, page 2, commencing with the words:

6 "'What about the alliance with Germany and
7 Italy?' I asked. 'America feels very strongly about it.'

8 "MATSUOKA looked up sharply. Then he said:

9 "'I wrote that treaty myself and I conducted
10 all the final negotiations with the Germans. I know
11 just what that treaty means. And I can tell you that
12 there is nothing in that treaty compelling Japan to go
13 to war in the Pacific. I told the Germans so, and they
14 accepted my interpretation. We'll decide for ourselves
15 what we are going to do.'

16 "'Ah,' I thought, 'a proviso I did not know
17 about.'

18 "'But will the Army agree?' I ventured to
19 suggest.

20 "MATSUOKA played with his mustache.

21 "'Well,' he finally replied, 'it's a question
22 of personal trust. I am willing to stake my whole
23 political career on this. If I should fail, I would
24 withdraw from politics entirely. But if President
25 Roosevelt would only trust me, I can guarantee that I

1 MR. CUNNINGHAM: Next, I would like to
2 take up the relations between Japan and Soviet Russia
3 after the conclusion of the Tri-Partite Pact.

4 I first call to the Court's attention
5 Article V of the Tri-Partite Pact which says: "Japan,
6 Germany and Italy affirm that the aforesaid terms do
7 not in any way affect the political status which
8 exists at present as between each of the three con-
9 tracting parties and Soviet Russia" -- exhibit 43.

10 Exhibit 2735A, Prince KONOYE's Memoir "On
11 the Tri-Partite Pact," transcript pages 24,290-24,307.

12 I next call the Court's attention to defense
13 exhibit 2735A, Memoir of Prince KONOYE "On the Tri-
14 Partite Pact," and specifically refer to KONOYE's
15 statement that one of the principal aims of the Pact
16 was the improvement of Japanese-Russian relations,
17 pages 4 and 5. The same peaceful intention of the
18 Japanese Government and understanding with Germany
19 in this regard at the time of the conclusion of the
20 Pact is also shown in prosecution's exhibits Nos.
21 549, 550, 552, and 555, transcript pages 6323
22 to 6343, 6350 to 6379, 6396 to 6399; and also on
23 13 April 1941 the Neutrality Pact between Japan and
24 Soviet Russia was concluded (exhibit No. 45).

25 I now offer in evidence defense document

1 to show that the purpose of MATSUOKA's visit was
2 something else. We are trying to show, by this, the
3 real purpose. This is the manner in which the people
4 of the United States of America were informed as to
5 the purpose of MATSUOKA's visit to Moscow and Berlin.

6 THE PRESIDENT: By a majority, the objection
7 is upheld and the document rejected.

8 MR. CUNNINGHAM: I now offer in evidence
9 defense document 1698-E, which I do not care to take
10 too much time to debate. I just ask the Court to
11 consider it for what light it throws upon, and I ask
12 that I be permitted to read it without explanation.

13 THE PRESIDENT: Brigadier Nolan.

14 BRIGADIER NOLAN: If it please the Tribunal,
15 we object to the document. It purports to contain an
16 account of what appeared in a Japanese newspaper con-
17 cerning an interview with Prince KONOYE. The Tribunal,
18 we submit, would not admit the newspaper containing the
19 interview and will not admit a secondhand account such
20 as this.

21 THE PRESIDENT: The Tribunal upholds the ob-
22 jection and rejects the document.

23 MR. CUNNINGHAM: I now refer to defense ex-
24 hibit No. 2735-A, at pages 24,280 and 24,307, Prince
25 KONOYE's memoir on the Tri-Partite Pact, in which Prince

1 KONOYE stated that Germany went to war against Russia
2 despite the Japanese urging not to do so, and that
3 the German-Russian war shattered the very foundation
4 of the Tri-Partite Pact.

5 I now offer in evidence defense document
6 206-E (82), an excerpt taken from Ambassador Grew's
7 book "Ten Years in Japan," which is his diary of 26
8 June 1941, to show that Grew recognized that the
9 German-Russian war had shattered the foundation of
10 the Tri-Partite Pact.

11 THE PRESIDENT: Brigadier Nolan.

12 BRIGADIER NOLAN: If it please the Tribunal,
13 the first paragraph, as will be observed, commences
14 with the two words "we learn." The source of this
15 information is not divulged. The second paragraph
16 sets out the opinion of Mr. Grew of the consequences
17 of the Soviet-German war.

18 We submit that the document has no probative
19 value and should be rejected in its entirety.

20 MR. CUNNINGHAM: Well, your Honors, if Mr.
21 Grew was here, this question would be put to him, and
22 we cannot help but assume that he would answer the
23 question now just as he noted the question in his
24 book so many years ago when the events were taking
25 place. It was his responsibility to keep his government

1 informed on the political significance of the historic
2 events which were taking place at that time. Until a
3 better authority comes along, we must take his word
4 as the best living authority on Japanese-American
5 relations and reactions. These two statements go
6 pretty much to the heart of a couple of the vital
7 issues involved in this case.

8 THE PRESIDENT: The Tribunal upholds the
9 objection and rejects the document.

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1 MR. CUNNINGHAM: I next call the Court's
2 attention to prosecution exhibit 805, transcript pages
3 7,981-7,982, telegrams sent from the Foreign Office
4 in Tokyo to the Japanese Embassy in Berlin on
5 6 December 1941, which shows that Japan wanted abso-
6 lutely to keep peace with Russia, even at the risk
7 of postponing the conclusion of the No-Separate Peace
8 Treaty. I will read from exhibit 805 the part not
9 read by the prosecution. Page 1, marked --

10 THE PRESIDENT: Mr. Comyns Carr.

11 MR. COMYNS CARR: Your Honor, if my friend
12 reads the first paragraph it will be apparent that his
13 description of the contents is entirely inaccurate.

14 THE PRESIDENT: Read the part not read by
15 the prosecution but in evidence. We will form our
16 own conclusion.

17 MR. CUNNINGHAM: I read from exhibit 805 of
18 the prosecution:

19 "From the standpoint given"---

20 Page 1, beginning with the second paragraph.
21 The first paragraph was read by the prosecution, as
22 I understand it.

23 "In doing this, explain to them at consider-
24 able length that insofar as American materials being
25 shipped to Soviet Russia through any point lying within

1 the scope of our intelligence are concerned, they are
2 neither of high quality nor of large quantity, and that
3 in case we start our war with the United States we will
4 capture all American ships destined for Soviet Russia.
5 Please endeavor to come to an understanding on this
6 line.

7 "However, should Foreign Minister Ribbentrop
8 insist upon our giving a guarantee in this matter, since
9 in that case we shall have no other recourse, make a --
10 statement to the effect that we would, as a matter of
11 principle, prevent war materials from being shipped
12 from the United States to Soviet Russia via the
13 Japanese waters and get them to agree to a procedure
14 permitting the addition of a statement to the effect
15 that so long as strategic reasons continue to make it
16 necessary for us to keep Soviet Russia from fighting
17 Japan (what I mean is that we cannot capture Soviet
18 ships), we cannot carry this out thoroughly.

19 "In case the German Government refuses to
20 agree with 1 and 2 and makes their approval of this
21 question absolutely conditional upon our participa-
22 tion in the war and upon our concluding a treaty
23 against making a separate peace, we have no way but
24 to postpone the conclusion of such a treaty. This
25 point is intended for you to bear in mind."

1 I now call the Court's attention to prosecu-
2 tion exhibit 812A, transcript page 8014 to 8020, mem-
3 orandum regarding conversation between OSHIMA and
4 Ribbentrop on 6 March 1943, which shows clearly that
5 the Japanese Government also in 1943 refused the
6 German request to go to war against Soviet Russia.

7 I call the Court's attention to exhibit 2693,
8 transcript page 23,559-23,560, excerpts from the
9 interrogation of OSHIMA, Hiroshi on the 22nd of April
10 1946, which shows that Japan continued to refuse
11 the German request to join in the war against Soviet
12 Russia.

13 THE PRESIDENT: Mr. Comyns Carr.

14 MR. COMYNS CARR: May it please the Tribunal,
15 the prosecution must again protest against the defense
16 introducing comments on prosecution exhibits which
17 entirely misrepresent their character. If the Tribunal
18 will look for themselves at exhibit 812A they will see
19 that my friend's comment is misleading.

20 THE PRESIDENT: We will decide these matters
21 for ourselves. Mr. Cunningham does not follow the
22 conventional form of making submissions, but he makes
23 assertions.

24 MR. CUNNINGHAM: Well, if your Honor please,
25 I hope you don't think I have the time or energy to

1 peruse all the documents and the recommendations that
2 are made to the documents.

3 MR. COMYNS CARR: Your Honor, that is why
4 the prosecution objects to misleading comments upon
5 other parts of the case.

6 THE PRESIDENT: They offend and provoke, but
7 they do not mislead, rest assured.

8 MR. CUNNINGHAM: Well, there is no intention
9 to do either, your Honor, and we are only adopting
10 the same procedure which was followed by the prosecu-
11 tion.

12 THE PRESIDENT: The prosecution did not offend
13 in that respect, nor did other defense counsel --
14 American defense counsel.

15 MR. CUNNINGHAM: I didn't hear that last.

16 (Whereupon, the statement of the
17 President was read by the official court
18 reporter.)

19 MR. CUNNINGHAM: Well, I should like to have
20 your particularize, your Honor, if you are making an
21 allegation against me.

22 THE PRESIDENT: The transcript is your answer.

23 MR. CUNNINGHAM: Well, by the same token,
24 that is my only answer to the Tribunal.

25 I now call attention of the Court to exhibit

1 2676, transcript pages 23,303-23,345, affidavit of
2 TANAKA, Shinichi, to show that the Tri-Partite Pact
3 never affected in any way the annual operational plan
4 of the Japanese Army against Russia, and that Japan
5 did not feel obliged to help Germany in case of
6 German-Russian war. Page 6, item 9, of the affidavit
7 concerns this point.

8 Proof will now be offered as to the lack of
9 Japanese-German cooperation in the matter of Indo-
10 China. Prosecution's charge that Japan utilized
11 German pressure in the negotiations with the French
12 Government concerning French Indo-China will be
13 refuted. I should modify that to say at least attempt
14 at refutation.
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1 Defense document 1646, the statement of the
2 Governor- General of French Indo-China, 24 September
3 1940. First, I offer in evidence a statement of the
4 Governor-General of the French Indo-China, 24 Septem-
5 ber 1940, which appeared in the Asahi Shimbun, to
6 show that the entry of Japanese troop in northern French
7 Indo-China in September 1940 was voluntarily agreed
8 between the governments of Japan and France.

9 THE PRESIDENT: Mr. Oneto.

10 MR. ONETO: We object to document 1646, and
11 ask the Court to reject it. This document has no pro-
12 bative value. It deals with information published in a
13 Japanese newspaper emanating from the Domei News Agency,
14 which, in turn, claims to have received it from another
15 news agency. It is not even hearsay, but hearsay from
16 hearsay. Such a document ought not to be taken into
17 consideration by the Tribunal in view of its usual
18 ruling in this case. It is not the proper method of
19 proof, and such a matter must be proved in the proper
20 way.

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22 MR. CUNNINGHAM: I only offer to read the
23 quotation, the statement of the man who was responsible
24 for stating the policy and the situation as he found it.

25 If the French prosecutor can say that this
statement is not true, then perhaps it should not be

1 admitted, but until they show evidence to the contrary,
2 I think this should be admitted.

3 THE PRESIDENT: By a majority, the Court
4 upholds the objection and rejects the document.

5 MR. CUNNINGHAM: I now offer in evidence
6 defense document No. 1640, a memorandum signed by
7 Woermann dated 23 July 1941, to show that the French
8 Government came to an agreement with Japan concerning
9 joint defense of French Indo-China without any pressure
10 from the German Government, and that therefore no
11 collaboration between Japan and Germany existed with
12 respect to this matter.

13 Mr. Levin will take this over for a minute.

14 MR. LEVIN: (Reading) "Berlin, 23 July 1941."

15 THE PRESIDENT: Mr. Levin, it hasn't been
16 dealt with yet.

17 MR. LEVIN: Yes.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document 1640
20 will receive exhibit No. 2753.

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 2753 and received in evidence.)
24

25 MR. LEVIN: I now read defense document
2753 -- rather, defense exhibit.

"Berlin, 23 July 1941.

"Minister Cosmelli brought out today, as announced by the telegram No. 636 of 22 July from Rome, the following:

"The Japanese Ambassador asked upon instruction the Italian Government to take steps to the French Government in order to support the Japanese note to France concerning the concession of fleet bases, etc., in Indo-China. Anfuso answered that Italy is not represented in Vichy and that (which is not mentioned in the telegram from Rome) the contact with the French Government exists only through the armistice commission, which cannot usually be appealed concerning such questions.

"Mr. Cosmelli inquired upon instruction whether we received corresponding Japanese request and whether we had taken a step in Vichy.

"I told Mr. Cosmelli that the Japanese Government informed us of the matter and also expressed the wish that we may use our influence on Vichy. Meanwhile however the French Government has" -- there is a word there that is not readable -- "accepted the Japanese requests, although with some changes and with the statement that this happened under duress. The French Government declared to us that it wanted to

1 make contact with us beforehand, but the Japanese
2 requests were so urgent that it could not do so. Under
3 these circumstances there was no case for us to use
4 our influence on the French Government. The Japanese
5 Government knows that we shall not obstruct her in
6 the matter."

7 We now offer in evidence defense document
8 206-E(87), an excerpt taken from Ambassador Grew's
9 book, "Ten Years in Japan," which is his diary of
10 25 July 1941, to show that the official spokesman of
11 the French Government declared at that time that the
12 occupation of strategic points in southern French
13 Indo-China by Japan was carried out as a result of
14 voluntary agreement between Japan and France without
15 German pressure.

16 THE PRESIDENT: Mr. Oneto.

17 MR. ONETO: If the Tribunal please, we object
18 to this document and ask the Tribunal to reject it.

19 It is an excerpt from the diary of former
20 United States Ambassador Grew, entitled "Ten Years in
21 Japan." Mr. Grew did not hear this declaration
22 directly. By the context, we assume that he learned it
23 from newspapers or from some other undeclared source.
24 Therefore, Mr. Grew does not know it from his own
25 knowledge. It is mere hearsay. This excerpt is

1 without probative value and does not constitute the
2 proper method of proof. For this reason, I ask the
3 Tribunal that this document be rejected.

4 MR. LEVIN: We submit, if the Tribunal please,
5 that the reasons assigned for not admitting this
6 document in evidence are not very valid. The prin-
7 cipal argument of the French prosecutor is that this
8 is largely hearsay, and naturally we will concede
9 that to be a fact. However, the ambassador from the
10 United States obtained his information in the course
11 of his duties, made a note of that information, and
12 has recorded it; and, therefore, it is certainly
13 admissible here. It seems to be a record of contem-
14 poraneous information which he received.

15 THE PRESIDENT: By a majority, the Court
16 upholds the objection and rejects the document.

17 MR. LEVIN: I now offer in evidence defense
18 document 1683, an official document of the Japanese
19 Foreign Office, which is the record of conversation
20 between Foreign Minister TOYODA and Ambassador Grew
21 on 26 July 1941 concerning entry of Japanese forces
22 into southern French Indo-China and American counter-
23 measure thereto. Foreign Minister TOYODA explained
24 the purpose of Japanese advance and denied any German
25 pressure or collaboration with regard to this question.

THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document 1683 will
2 receive exhibit No. 2754.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 2754 and received in evidence.)

6 MR. LEVIN: I now read exhibit 2754. I
7 omit the formal part.

8 "1. The Minister first asked the Ambassador
9 if he reported to his government on the matters dealt
10 with in detail last night, and Ambassador Grew replied
11 to the effect that he had 'telegraphed the whole text
12 of your memorandum.'

13 "2. Then the Minister asked, 'Have you made
14 any efforts to exert some of your influence upon your
15 government in this respect?' To this the Ambassador
16 replied, 'I am very sorry that the situation has become
17 too seriously strained to allow any individual influence
18 to compromise the measures taken by America; now all
19 is out of my hands.' Saying that the Minister should
20 have been informed by the report of Ambassador NOMURA,
21 Ambassador Grew read out the full text of the copy of
22 a telegram concerning the talks at the interview
23 between Ambassador NOMURA and Mr. Welles, the Under
24 Secretary of State, on July 23.
25

1 "To the question of the Minister as to
2 whether there was any room for consultation about the
3 measures taken by the American Government with regard
4 to the arrangement which the Japanese Government had
5 adopted toward French Indo-China, the Ambassador
6 replied as follows:
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1 "Under the present situation, there seems
2 to be no room for it. America has offered a period of
3 time in which Japan might arrange according to the prin-
4 ciple of free trade and economical equality and make
5 some orientation of internal public opinion for that
6 purpose. This proposal of America should have been,
7 at the same time, useful for Japan too. As such is
8 the situation, I should like to ask you whether there
9 is no room to refrain from the recent occupation by
10 the Japanese forces.'

11 "To this the Minister instantly and definitely
12 replied, 'No.'

13 "3. Then the Minister related that the recent
14 advance of Japanese forces into Southern French Indo-
15 China was, as explained in detail last night, nothing
16 but an unavoidable measure forced upon Japan for the
17 maintenance of peace in the Pacific in consideration
18 of the circumstances strengthening the anti-Japanese
19 enveloping campaign and implied no other intention.

20 "To this Ambassador Grew replied that he could
21 not help regretting the difference of opinion with re-
22 gard to the so-called anti-Japanese envelopment the
23 Minister referred to. Though America had firmly held
24 the policy of 'no threat' toward Japan, she couldn't
25 help but feel that, in view of the attitude which had

1 hitherto been taken by the Japanese Government, Japan
2 was preparing for a southward advance policy at the
3 sacrifice of other countries in each case.

4 "So the Minister repeatedly emphasized that
5 there were misunderstandings in this regard on the
6 side of America. Ambassador Grew, however, persistently
7 repeated that America had no choice than to resort to
8 'acts and facts' as the standpoint from which to judge
9 the attitude of Japan.

10 "4. Then the Minister referred to the sub-
11 stance of the copy of the telegram which Ambassador
12 Grew has just read and revealed his views on the matter
13 in detail, asking the Ambassador's explanation on the
14 following points:

15 "(a) According to the view of Under Secretary
16 Welles, the recent measures taken by Japan toward French
17 Indo-China seemed as if taken under the pressure of
18 Nazi Germany. This, however, is a false view absolute-
19 ly contrary to the facts. Japan adopted the recent
20 measures as the result of peaceful agreement between
21 the governments of Japan and France for the defense
22 of French Indo-China. (Ambassador Grew declared on
23 this point that he was very glad to hear the Minister
24 make this explanation and that he would report on this
25 point by wire to his home government without fail.)

1 Frankly, French Indo-China authorities themselves are
2 so anxious that they cannot be sure that French Indo-
3 China in the future would not follow the same course
4 as Syria.

5 "(b) Under Secretary Welles regarded the
6 recent advance of Japanese forces into Southern French
7 Indo-China decisively as if it implied the intention
8 of making it an advance base for another area. This
9 is also an absolute misunderstanding. As I stated
10 repeatedly, the aim of our recent measures is nothing
11 but the maintenance of peace in the Pacific and implies
12 no false intention. I feel the utmost regret that
13 America took such measures as the recent ones in spite
14 of the sincere desire of the Japanese Government not
15 to provoke such ones on the part of America.

16 "(c) The statement of Under Secretary Welles
17 contains the term 'no basis for continuing, etc.' as
18 Secretary of State Hull's words. Does it mean the
19 closing of the talks which are now in progress concerning
20 the readjustment of the diplomatic relations between
21 Japan and America? (To this Ambassador Grew replied
22 that although he had not sufficient knowledge about
23 the contents of this talk and was not in a position
24 to say anything on this matter, it can be construed,
25 according to his merely private opinion, as not to have

1 meant the closing of the talk, because it contains
2 the term 'unable to see, etc.' In short, nothing can
3 be said so far as the telegram is concerned.)

4 "The Minister then asked the Ambassador to
5 disclose his unreserved private opinions on this talk
6 under tacit agreement as being off-the-record, which
7 the Ambassador refused to do on the pretext that he
8 knew nothing about the matter.

9 "The part of the telegram which the Minister
10 referred to reads as follows: 'Mr. Hull was unable
11 to see that any basis was offered for continuing the
12 talks which Admiral NOMURA and Mr. Hull had been con-
13 ducting.'

14 "5. The Minister stated that he sincerely
15 regretted to see American-Japanese diplomatic relations
16 reaching the recent stage within a week after the forma-
17 tion of the new cabinet in Japan. This was utterly to
18 be attributed to the misunderstanding by America of the
19 true intention of the Japanese Government. Considering
20 its firm desire to check such a result, the Imperial
21 Japanese Government deeply regretted to see it.

22 "To this Ambassador Grew replied that he had
23 regretted seeing public opinion in Japan emphasizing
24 only American misunderstanding of Japan's real intention
25 and the newspapers reporting merely on discussions among

1 leading circles in all quarters in Japan to blame the
2 so-called misunderstanding on the part of America with
3 some degree of unwillingness to report on the real
4 policy of America. He was very glad to know that the
5 recent entry of Japanese forces into French Indo-China
6 was, according to what the Minister had just expressed,
7 nothing but a peaceful advance. He had deeply deplored
8 that America had been forced to take the recent measures
9 against Japan. He heartily hoped that the relations
10 between the two countries would not become worse than
11 ever.
12

13 "6. The Minister stated that he was afraid that
14 the American-Japanese relations would face the unhap-
15 piest stage in case more irritating measures against
16 Japan should be taken by the American Government. He
17 wished especially to emphasize this point. Frankly,
18 the Japanese Government had made every effort to suppress
19 the unpleasant feeling cherished by its nation at the
20 enforcement of aid to the Chiang Regime by the American
21 Government. But it would fall into a more difficult
22 stage if the situation should become worse than ever.

23 "To this Ambassador Grew replied that in this
24 regard the situation had been just the same in America.
25 In spite of the daily intensifying pressure of public
~~opinion demanding the government to take more rigorous~~

1 measures against Japan, such as the anti-Japanese
2 petroleum embargo, the American Government had not
3 yet gone so far as to carry out the petroleum embargo.
4 In this regard the public in Japan had not been given
5 any knowledge of the real facts concerning the American
6 policy or her true intention of aiming to keep friendly
7 relations with Japan. The Ambassador, however, had
8 been optimistic regarding the improvement of American-
9 Japanese relations. At the time of the YONAI Cabinet,
10 he held strictly confidential talks in camera with
11 Foreign Minister ARITA to improve the diplomatic rela-
12 tions between the two countries. This talk, however,
13 met with failure on the very eve of its closing as the
14 cabinet unfortunately clashed. This time there occurred
15 the recent entry of the Japanese forces into French
16 Indo-China too, when the conversation on the readjust-
17 ment of American-Japanese diplomatic relations was
18 going on. He could not help denouncing it as contrary
19 to the whole spirit of the conversation. But he did
20 not necessarily regard it as doing away with hope for
21 the future. He wished to be relied upon as he would
22 do his best in this regard.

24 "7. The Minister related that he was sorry
25 to see the recent stage, considering especially that
it was immediately after his assumption of the post of

1 Foreign Minister. He wished to ask the Ambassador
2 for his cooperation with the Minister's effort to do
3 his best. To this Ambassador Grew replied that he
4 wished as well not to give up hope for the future
5 despite the present situation.

6 "The interview was closed with the promise of
7 Ambassador Grew to send a report on today's talks by
8 wire to his home government."

9 THE PRESIDENT: Will you finish this section
10 of the defense case tomorrow, Mr. Cunningham, or can
11 we expect to be still sitting on Monday?

12 MR. CUNNINGHAM: The answer to that, your
13 Honor, lies here more than here (indicating). But I
14 shall try very hard to finish today, but--

15 THE PRESIDENT: We have heard enough. We don't
16 want any further discussion.

17 MR. CUNNINGHAM: May I say one more word that
18 has been provoked? I should not like to penalize my
19 colleagues by hurrying to get through today and take a
20 day off their recess, don't you see.

21 THE PRESIDENT: It is not necessary to get
22 through today to save that day of the recess; you still
23 have tomorrow.

24 MR. CUNNINGHAM: Well, my thought was, does
25 the recess begin on the 23d whether I finish this

1 afternoon or tomorrow noon?

2 THE PRESIDENT: It is fixed to begin on the
3 23d of June. If you finish many days before we will
4 regard the recess commencing as of the time you fin-
5 ished. But don't keep us here just for the sake of
6 giving your colleagues another day's recess.

7 We will adjourn until half past one.

8 (Whereupon, at 1200, a recess was
9 taken.)

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AFTERNOON SESSION

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2 The Tribunal met, pursuant to recess, at
3 1330.

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now in session.

6 THE PRESIDENT: Mr. Cunningham.

7 MR. CUNNINGHAM: If the Tribunal please, I
8 now offer in evidence, on the same subject as the one
9 before lunch, defense document No. 1682, an official
10 document of the Japanese Foreign Office, record of
11 conversations between Foreign Minister TOYODA and
12 Ambassador Grew on the 27th of July, 1941 concerning
13 the entry of Japanese forces into Southern French
14 Indo-China, and to show that TOYODA, in the conver-
15 sation, also denied emphatically any German pressure
16 in the matter.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Defense document 1682
19 will receive exhibit No. 2755.

20 (Whereupon, the document above re-
21 ferred to was marked defense exhibit No.
22 2755 and received in evidence.)

23 MR. CUNNINGHAM: I now offer to read defense
24 exhibit 2755, the record of the conversation between
25 Minister TOYODA and Ambassador Grew on the 27th of

1 July. These conversations were conducted strictly
2 confidentially and informally, off the record, at the
3 request of the Ambassador. (Reading)
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1 "AMBASSADOR GREW: 'The reason why I wanted
2 to see you today is because I have just received a
3 telegram from my Government, which I have just
4 read and found it to be of great importance and
5 I wanted to inform you of it immediately. I am
6 doing this at my own discretion and not by any
7 instructions from my Government. Therefore, I
8 should like to talk with you strictly confiden-
9 tially and informally "off the record". Then he
10 read the entire copy of the telegram concerning
11 the contents of the strictly confidential, inform-
12 al and "off the record" conversations between
13 Ambassador NOMURA and the American President,
14 conducted on 24 July at the White House at the
15 request of the Ambassador.

16 "The points referred to by the President
17 in the conversations are as follows:

18 "1. 'As the American President, I have
19 still been permitting the export of oil to Japan
20 in spite of the strong pressure of American public
21 opinion, because I earnestly hope that the rela-
22 tions between Japan and America should not become
23 worse.'

24 "2. 'The ambition of the Nazi Germans to
25 conquer the whole world is now menacing more than

1 ever and this menace will not only affect the
2 Western World but will extend to the Far East.'

3 "3. 'With regard to the encirclement
4 against Japan, America is not taking these steps
5 in the sense of turning against Japan but merely to
6 guarantee the acquisition of her industrial raw
7 materials. And therefore the steps taken by
8 America are ones of self-defense.'

9 "4. 'In case Japan should send her forces
10 to the Netherland Indies, Great Britain would im-
11 mediately stand up to help them and, in view of the
12 present close relations between Great Britain and
13 America, we too would be obliged to wage war
14 against Japan.'

15 "5. 'My proposal at this moment is that
16 if Japan would refrain from occupying French Indo-
17 China or, in case such steps have already been be-
18 gun, would withdraw such forces, I as the President,
19 am prepared to guarantee to the Japanese government
20 that I would do everything in my power to obtain
21 from the Chinese government, the British govern-
22 ment, and the Netherlands government, and the
23 Government of the United States would of course
24 itself give a binding and solemn declaration to
25 regard French Indo-China as a neutralized territory.'

1 "FOREIGN MINISTER: 'I should like to say
2 on a few points that have caught my attention re-
3 garding the contents of the telegram.

4 "1. 'The steps taken by the Japanese gov-
5 ernment this time to advance her troops to French
6 Indo-China were never enforced by the pressure of
7 the Nazi Germans, but were taken according to
8 Japan's own independent view. Moreover, ours is
9 not such a state that would do anything because of
10 the pressure of Nazi Germans.'

11 "Regarding this point, Ambassador Grew
12 replied:

13 "'I had already reported in detail to my
14 Government on the point you have just made, because
15 you strongly asserted the point in our previous
16 conversations.'

17 "The Foreign Minister reiterated:

18 "'According to my opinion, I am afraid the
19 American Government has a prejudice against the
20 Nazi Germans.'

21 "Then Ambassador Grew replied:

22 "'The American Government is obliged to
23 acknowledge through experience the fact that the
24 Nazi Germans have a scheme to conquer the world
25 and are putting the plan into practice.

1 "As I already reiterated in the past two
2 meetings, the purpose of the steps taken this time
3 to advance our troops to French Indo-China was
4 nothing but defensive and precautionary measures
5 on our part to cope with the situation which
6 indicated a formation of an encirclement against
7 Japan and we had no other intention whatsoever."

8 "Ambassador Grew replied that concerning
9 encirclement, the President had touched upon it
10 in his talk with Ambassador NOMURA.

11 "Then the Foreign Minister, in order to
12 confirm again the contents of the latest American
13 proposal, requested him to paraphrase a part of the
14 copy of the telegram.

15 "Thereupon, Ambassador Grew consented to
16 his request to take notes on condition that the
17 Minister should keep it absolutely secret and for
18 his own information only.

19 "At this juncture when the relations of
20 Japan and America are getting worse and worse and
21 are even threatening to deteriorate, Ambassador
22 Grew reiterated and expressed his hope that the
23 Foreign Minister would dwell upon the American
24 proposal and use his statesmanship to tide over
25 the present crisis.

"The Foreign Minister replied:

"I understood well all that your Ambassador has said just now. To my regret, however, it is too late to think over the proposal. Besides concerning the proposal of the President, I have received no report yet from Ambassador NOMURA, and therefore I cannot give the proposal any consideration immediately. But I promise you that I will give the matter careful consideration upon receipt of a report from Ambassador NOMURA.'

"Here Ambassador Grew repeatedly called the attention of the Minister and said:

"I have absolutely no intention of interfering in the internal affairs of Japan. Up to this moment, the Japanese government has tried to check the excited feelings of the nation, but the report that the American Government has recently frozen the Japanese funds in America greatly stimulated the feelings of the Japanese people. Under such circumstances it is absolutely impossible to take up immediately the proposal of the American President. Anyhow, I regret very much to say that the proposal is too serious for me to handle it single-handed.'

"Then Ambassador Grew said:

1 "Of course, I know quite well how import-
2 ant the time element is in a matter such as this.
3 Besides, I myself am here with no authority what-
4 soever. The contents of the telegram however,
5 are so serious that I did not wish to lose even a
6 moment in seeing and informing you of them. So
7 whenever you want my assistance, please do not
8 hesitate to call me.'

9 "With that the interview came to an end."
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1 I now offer in evidence defense document
2 206E(93), an excerpt from Ambassador Grew's book,
3 "Ten Years in Japan," which is his diary of the 18th
4 of August, 1941 concerning the conversation with
5 Foreign Minister TOYODA, to show that Ambassador Grew
6 was told categorically that no Japanese-German coll-
7 aboration existed, in Indo-China matter, and Japan
8 kept the negotiation with the United States of Ameri-
9 ca secret to Germany. I might note that no place
10 else is this conversation reported, as I understand
11 it.
12

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Defense document 206E(93)
15 will receive exhibit No. 2756.

16 (Whereupon, the document above re-
17 ferred to was marked defense exhibit No.
18 2756 and received in evidence.)

19 MR. CUNNINGHAM: I think I will cut it and
20 go from page 1 to the middle of page 3, and then
21 from No. 11 on page 4. The rest is perhaps somewhat
22 repetitious.

23 I now offer to read defense document 206E(93)
24 which is exhibit No. 2756. (Reading)
25

1 "The Foreign Minister asked me to call
2 this afternoon and we had the longest conversation
3 that I have ever had with any Foreign Minister any-
4 where. It lasted for two and a half hours and the
5 boys in the Code Room finished encoding my report
6 at 5:35 A.M., while I myself was on the job until
7 long after midnight.

8 "Appropos this conversation, it was a fear-
9 fully hot day, and as I wrote down his remarks, it
10 was drip, drip, drip, so after the first hour
11 Admiral Toyoda ordered cold drinks and cold wet
12 towels to swab off with. He made a gesture to
13 take off his coat and looked at me smilingly and
14 questioningly. Of course I nodded, so we both took
15 off our coats, rolled up our sleeves, and again
16 pitched in to the work. The Minister speaks
17 English moderately well and understands whatever I
18 say without interpretation, but he always has
19 INAGAKI, one of the American Bureau of the Foreign
20 Office, present to interpret his own remarks after
21 he gets to the "on-the-record" stage.
22

23 "Today the talk was so important that I
24 wrote down everything he said, about a dozen pages
25 of foolscap, and I almost had writer's cramp at the
end. He is a sympathetic and very human type and

1 I think I like him more than any other Foreign
2 Minister I have ever dealt with. Our personal
3 relationship is very friendly. Today, while we
4 were swabbing off with the cold towels, I said,
5 "Admiral, you have often stood on the bridge of a
6 battleship and have seen bad storms which lasted
7 for several days, but ever since you took over
8 the bridge of the Foreign Office you have under-
9 gone one long, continuous storm without any rest.
10 You and I will have to pour some oil on those
11 angry waves." The Minister laughed heartily and
12 I guess he will relate that remark in cabinet,
13 but he missed the opportunity to say: "All right,
14 but if you stop sending us the oil, what are we
15 going to do about it?"

16 "Our conversation began at 4 o'clock this
17 afternoon and in an oral statement which took two
18 hours and a half to be delivered, interpreted from
19 Japanese into English and transcribed by me, Admiral
20 TOYODA set forth a proposal of prime importance for
21 solving the present critical situation between Japan
22 and the United States. He pointed out the supreme
23 importance of avoiding any leakage, especially, he
24 said, to the Germans or Italians, and he hoped that
25 in my report to Washington no risk would be incurred

1 of my telegram being read by others. I said
2 that the telegram would be sent in a code which
3 I hoped and believed was unbreakable: I said
4 that so far as I was concerned the only persons
5 who would be informed of the proposal would be
6 Mr. Dooman and my confidential secretary, Miss
7 Arnold, who would transcribe the conversation.
8 The Minister seemed to be entirely satisfied
9 with these assurances.

10 "The Minister commenced by stating that
11 this was to be a long and strictly confidential
12 talk on a very important matter in which he asked
13 for my cooperation. He said that he would speak
14 to me frankly as a naval officer and not as a
15 career diplomat. I replied that I myself had no
16 use for Old World diplomacy and was accustomed to
17 speaking also with the utmost frankness and straight
18 from the shoulder. What follows is a paraphrase of
19 the summary of Admiral TOYODA'S remarks:

20 "1. The stationing of Japanese forces in
21 Indo-China, resulting from the protocol for the joint
22 defense of Indo-China, was a peaceful and protective
23 step taken on Japan's own initiative and no German
24 or other pressure had been exerted.

25 "2. In spite of the foregoing assurances

1 conveyed to me and also to Admiral NOMURA, the
2 United States had assumed that this was the exer-
3 cise of armed force at the instigation of Germany
4 and had taken an economic step (our freezing order)
5 which had brought our countries very near to a com-
6 plete severance of economic relations and had left
7 a big black spot on the long history of peaceful
8 relations between the United States and Japan.

9 "3. The Japanese people, said the Minister,
10 share his view and public opinion has become extreme-
11 ly excited, but the Government has done all in its
12 power to repress this excitement by prohibiting
13 posters, public gatherings, and hostile press comment.

14 "4. The reply of the Japanese Government
15 to the President's proposal of July 24 was sent im-
16 mediately to Washington, and when Secretary Hull
17 returned to Washington on August 6 Ambassador NOMURA
18 had handed him the reply. This reply had been draft-
19 ed after careful and complete study and with a view
20 to meeting as far as possible the intentions of the
21 American Government.

22 "5. The Japanese reply contains important
23 proposals which would bind both Governments; Japan-
24 ese forces in Indo-China would be immediately with-
25 drawn when the China affair is settled; it contains

1 three points binding each party.

2 "6. Nevertheless, the President's pro-
3 posal was an independent one dealing exclusively
4 with the joint-defense measure of Indo-China. The
5 Japanese reply was also accordingly restricted to
6 that subject and was to be dealt with independent-
7 ly of the general adjustment of relations which
8 had been discussed between Secretary Hull and
9 Admiral NOMURA."

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Paragraph 11 on page 4:

1 "Admiral TOYODA fears that the breakdown of
2 peace between the two countries would not only be an
3 extremely miserable matter in itself; Japan and the
4 United States, as the last two countries which hold
5 the key for maintaining world peace in the present
6 state of the world, would make a bad situation still
7 worse by failing to practice statesmanship. This
8 would leave the blackest spot on human history, and
9 future historians would find themselves unable to
10 understand the nature of the breakdown. Finally, if
11 we as statesmen allow such a situation to arise it
12 will mean that we have failed in our responsibilities
13 to both peoples."

14 No. 20 on page 6:

15 "The foregoing is the substance of the highly
16 serious and absolutely secret proposal for which the
17 Minister especially asked me to visit him today. In
18 view of its importance and delicate nature he does
19 not need to ask me to keep this only to myself, as
20 it is not difficult to imagine what would occur if
21 it should leak out. This is the reason why he has
22 so far been instructing only Admiral NOMURA to dis-
23 cuss and to dispose of the matter in the United
24 States, but in order to make this proposal realized
25 he has most frankly expressed his opinion to me so

1 that he may have my helpful cooperation, and, if
2 there should be any question concerning this proposal,
3 he will be very glad to talk it over with me."

4 Next I propose to show that the Japanese
5 Government, right after the conclusion of the Tri-
6 Partite Pact, reopened the efforts for improving the
7 Japanese-American relations, and that during the
8 informal negotiations between Japan and the United
9 States, which was kept secret to Germany, German
10 suspicion as to the attitude of Japan grew and the
11 Japanese-German relations suffered setback.

12 I now offer in evidence defense document
13 No. 401B(55), an excerpt from "Foreign Relations of
14 the United States," which is a telegram from Stein-
15 hardt, United States Ambassador in Moscow, to the
16 Secretary of State, dated 11 April 1941, to show that
17 MATSUOKA endeavored in Moscow to spin a thread of
18 negotiations with the United States of America
19 through Steinhardt, and also declared that he did not
20 commit anything in Berlin to the Germans. This is a
21 telegram of the same nature as the one sent on 24
22 March 1941, which is prosecution's exhibit No. 1289,
23 transcript pages 11,686-11,687, to which I call the
24 Court's attention.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document
2 401B(55) will receive exhibit No. 2757.

3 (Whereupon, the document above re-
4 ferred to was marked defense exhibit No.
5 2757 and received in evidence.)

6 MR. CUNNINGHAM: I read exhibit 2757, excerpt
7 from "Foreign Relations of the United States," skip-
8 ping the formal parts. (Reading)

9 "The Ambassador in the Soviet Union (Stein-
10 hardt) to the Secretary of State (Substance)

11 "Moscow, April 11, 1941 - 5 p.m.

12 "(Received 9:50 p.m.)

13 "This afternoon I called on MATSUOKA and,
14 with reference to the conversation I had with him
15 on April 8, I read to him the following set of ex-
16 cerpts from the report I had drawn up of what he said
17 in the conversations:

18 "'(1) Mr. MATSUOKA had made no commitments
19 either to Berlin or to Rome.

20 "'(2) Japan's reason for entering the Tri-
21 Partite Pact was preservation of the peace.

22 "'(3) Japan was not under an obligation to
23 go to war with the United States, but the situation
24 might not be the same if the United States declar war
25 on Germany.

"(4) The Japanese Minister does not expect

1 a declaration of war on the United States by Germany,
2 but if that action does take place, the Minister
3 hopes that the United States will not make any more
4 in the Pacific until Japan shall have made here posi-
5 tion clear.

6 "(5) Japan's obligation under the Tri-Par-
7 tite Pact will be adhered to by the Government.

8 "(6) Both Ribbentrop and Hitler had ex-
9 pressed to the Minister their desire that the sphere
10 of war be limited, and had stated to him that in-
11 volvement in a war with the United States was not
12 their desire.

13 "(7) The suggestion had been made to the
14 Minister by Ribbentrop and Hitler that steps be taken
15 by him leading to the discouragement of anti-Ameri-
16 can agitation in Japan.

17 "(8) All three men had expressed desire
18 for peace.

19 "(9) Hitler's personal impression on the
20 Minister had been favourable.

21 "(10) Admiration for the way the British
22 were fighting was expressed by Ribbentrop.

23 "(11) Hitler would not attempt an invasion
24 of Britain unless it became necessary, as his expec-
25 tation was that he would win the war by aerial and

submarine activities against that country.

"(12) Mr. MATSUOKA was unable to see any possibility that Britain would drive a wedge between Italy and Germany, Italy being in large measure already under German control.

"(13) Russian demands had been so excessive that Mr. MATSUOKA had not made any real progress in his talks with the Russians.

"(14) It was possible for the United States to be indifferent to the USSR, but Japan's alternatives were either to reach an agreement or to become embroiled.

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1 "(15) The Minister desired that the war in
2 China be terminated, and he had suggested that Presi-
3 dent Roosevelt could bring this about if he indicated
4 to General Chiang Kai-Shek that further assistance
5 "would not be forthcoming from the United States should
6 the latter refuse a just and honorable peace.

7 "(16) The Minister had expressed his desire
8 for trust in him by President Roosevelt and the Secre-
9 tary of State.

10 "MATSUOKA categorically indicated his approval
11 as I read each statement. The only times he commented
12 was when I read items (3), (8), (10), and (15), of
13 which he gave the following amplifications.

14 "(a) Under item (3) Mr. MATSUOKA said that
15 in his view Japan is obliged under the Tri-Partite
16 Pact to go to war with the United States if the latter
17 should declare war on Germany, but that Japan would
18 first confer with Germany.

19 "(b) Under item (8) the Minister said that
20 while they had expressed their desire for peace,
21 Ribbentrop and Hitler had left him in no doubt that
22 at the present time there was no possibility for peace
23 and that several times Hitler had said to him emphatic-
24 ally that unless Britain capitulated there would be
25 no peace.

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2 China be terminated, and he had suggested that Presi-
3 dent Roosevelt could bring this about if he indicated
4 to General Chiang Kai-Shek that further assistance
5 "would not be forthcoming from the United States should
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8 for trust in him by President Roosevelt and the Secre-
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15 in his view Japan is obliged under the Tri-Partite
16 Pact to go to war with the United States if the latter
17 should declare war on Germany, but that Japan would
18 first confer with Germany.

19 "(b) Under item (8) the Minister said that
20 while they had expressed their desire for peace,
21 Ribbentrop and Hitler had left him in no doubt that
22 at the present time there was no possibility for peace
23 and that several times Hitler had said to him emphatic-
24 ally that unless Britain capitulated there would be
25 no peace.

4 "(d) Under item (15) he expanded what he
5 had previously said by stating that peace between
6 China and Japan could come only as the result of
7 direct negotiation between them; an intermediary
8 would not be accepted by the Japanese public.

I now offer in evidence defense document 1659, an official document of the Japanese Foreign Office which is an opinion of the German government handed to the Japanese government on 11 May 1941 that Germany was opposed to the Japanese-American negotiations unless certain conditions were met.

18 CLERK OF THE COURT: Defense document 1659
19 will receive exhibit No. 2758.

23 MR. CUNNINGHAM: I offer to read in evidence
24 exhibit 2758:

25 "Summary of the Opinion of the German

Government as told by Ambassador Ott in Tokyo on
11 May 1941.

"It goes without saying that the Japanese Government itself would be in the best position to decide to what degree the proposal of the American President would restrict future Japanese action in Greater East Asia Co-prosperity Sphere. The German Government cannot but consider the proposal as originating from a far-reaching deliberation of the American President aimed at bringing about the relaxation of tension in the Pacific, in order to relieve the anxieties of the anti-war elements in the USA, and to advance in the established direction of participation in the war. The only way to check the determination of the leaders of the American Government to go to war has been to clarify the fact that American entry into the war will necessarily cause Japanese participation in the war. Therefore, there is no doubt that the American President is planning first to neutralize this fact and then to facilitate positive action on the European front.

"The policy of the American Government is to intensify de facto unneutral actions (patrol or convoy) without declaring war, to wait for counter-actions by Germany and Italy, and thus to shift the

responsibility of starting the war to the axis side.

1 Therefore, the German Government thinks it proper
2 for the Japanese Government in its reply to the
3 USA (1) to emphasize that the continuance of actions
4 contrary to international law such as patrol or con-
5 voy, now being taken by the American Government will
6 be considered as intentional measures of the USA to
7 provoke war, and that it will necessarily force
8 Japan to enter the war, (2) to state clearly that
9 the Japanese Government is ready to study American
10 proposals if the USA refrains from such actions.

11 "In view of the grave effects this matter can
12 have on the powers of the Tri-Partite Pact, the
13 German Government asks of the Japanese Government
14 that the content of the Japanese reply before being
15 dispatched be confidentially shown to the German and
16 Italian Government and that their opinions thereof
17 be hard," "Heard," I presume that is.

18
19 I next offer in evidence defense document
20 No. 1658 which is an official document of the Japanese
21 Foreign Office, instruction of the German government
22 to the German ambassador in Tokyo which was presented
23 by Ambassador Ott to Foreign Minister MATSUOKA on
24 17 May 1941 to show that Germany was strongly displeased
25 that Japan sent her reply to the United States without

1 waiting for German opinion, as shown by exhibit 2758,
2 and requested full participation in the Japanese-
3 American negotiations which request the Japanese
4 government, as will be proved later, never complied
5 with.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 1658
8 will receive exhibit No. 2759.

9 (Whereupon, the document above referred
10 to was marked defense exhibit No. 2759 and received
11 in evidence.)

12 MR. CUNNINGHAM: I read from exhibit 2759,
13 skipping the formal parts:

14 "Instruction of the German Government to the
15 German Ambassador in Tokyo (brought by the German
16 Ambassador in Tokyo, Ott, on the occasion of a conver-
17 sation with Foreign Minister MATSUOKA on 17 May 1941)

18 "The German Government is of the opinion that
19 the best way to prevent American participation in the
20 war would have been for Japan to refuse decisively to
21 negotiate on the American proposal. The German Govern-
22 ment regrets that the Japanese Government did not wait
23 the German opinion before sending its answer for
24 the American Government. The Tri-Partite Pact was
25 concluded last year as a political and moral union of

1 the three powers Japan, Germany and Italy, and its
2 great aim was to prevent third countries from par-
3 ticipating in the war. The Pact has attained its
4 aim heretofore and it will show its effectiveness
5 also in the future if the United front of Japan,
6 Germany and Italy can be closely maintained. Any
7 treaty entered upon by one of the signatories of the
8 Tri-Partite Pact with third countries outside the
9 Pact can be taken to mean a weakening of the Tri-
10 Partite front and therefore a diminishing of the
11 political effect of the Pact. If, nevertheless, the
12 Japanese Government thinks it unavoidable to negotiate
13 with the U.S. government concerning Japanese-American
14 relations, it will at least be necessary to forestall
15 the possibility of such an unfavorable effect as
16 mentioned above, since the USA is virtually an enemy
17 of the Axis powers (although according to the inter-
18 national law she is not).

19 "Therefore it must be made the cardinal point
20 of the Japanese-American agreement that the obligation
21 of the US government not to interfere in the war be-
22 tween Britain and the Axis (in a much clearer form
23 than before) and the obligation arising for Japan from
24 the Tri-Partite Pact are established clearly and un-
25 equivocally. All other stipulations must be dependent

1 on this cardinal point. Under these circumstances,
2 the question of form would have the most important
3 meaning. The second paragraph of the Japanese reply,
4 which relates to the existence of the Japanese obliga-
5 tion arising out of the Tri-Partite Pact, set out the
6 minimum of which should be referred to in a Japanese-
7 American agreement; to deviate from or to weaken that
8 minimum would bring matters to a downfall and, as a
9 result, would contradict the spirit and meaning of
10 the Tri-Partite Pact, ultimately making the Pact
11 illusory.

12 "The German Government now has to assert the
13 request that it be permitted to participate fully in
14 the Japanese-American negotiations and be informed
15 immediately of the answer of the USA. It will not
16 comply with the relations of the Tri-Partite Pact if
17 the Japanese Government receives American communica-
18 tions and decides the Japanese position in the future
19 without first reaching an understanding with the
20 German Government as to all of there important
21 questions." "There," I think, is "t-h-e-i-r."

22 I now offer in evidence defense document
23 1641, a telegram from Ott to the German Foreign
24 Office dated 30 August 1941 concerning a conversation
25 with the Japanese Foreign Minister TOYODA to show that

1 Toyoda refused to communicate to Ott the contents
2 of the message sent by Premier KONOYE to President
3 Roosevelt and that the Japanese government did not
4 take Germany in confidence regarding the Japanese-
5 United States negotiations.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 1641
8 will receive exhibit No. 2760.

9 (Whereupon, the document above
10 referred to was marked defense exhibit No. 2760
11 and received in evidence.)

12 MR. CUNNINGHAM: I offer now to read in
13 evidence exhibit 2760:

14 "Telegram (Secret Cipher process)

15 "Tokyo, 30 August 1941, 10.00 hours p.m." --
16 10:00 p.m., it must be --

17 "Arrival, 30 August 1941, 20.00 hours" --
18 so it must not be "p.m." above --

19 "No. 1660 of 30.8 most urgent!

20 "Following the telegram of 29, No. 1657+)

21 "The Foreign Minister received me this
22 afternoon in the presence of an interpreter. I
23 described to him at first according to the telegraphic
24 instruction of 25 August No. 1383*) the picture of the
25 general situation, emphasized the weakening which the

1 Soviet Union meanwhile experienced, and pointed
2 out to the unreadiness of the American armaments.
3 (I told him that) in this situation Japan can freely
4 make necessary decisions for the maintenance of her
5 position and her prestige without risking anything.

6 "I requested the Foreign Minister to inform
7 me of the details of the message of KONOYE to
8 President Roosevelt. (I said that) I was afraid
9 that this step might rouse in the U.S.A. the impres-
10 sion as if Japan is ready to give up an active action
11 in the Pacific, and repeated our well-known argument
12 as to the conclusions which can be drawn in the U.S.A.
13 from the above impression only very easily, TOYODA
14 answered that he could only confirm the statement
15 of the Vice Foreign Minister AMAU of the previous
16 day concerning the character of the KONOYE's message,
17 and avoided to enter into a discussion on the exped-
18 iency of the Japanese step. Japan wishes only in
19 accordance with the aim of the Tri-Partite Pact to
20 prevent America from entering the war. On my question
21 about the first impression caused by the KONOYE's
22 message he answered that the first conversation was
23 only short and in view of the general character of
24 the message no attitude of the American government
25 have surely not yet expressed. A report of Ambassador

1 NOMURA has not arrived yet; he will however comply
2 with me in view of the importance urgently expressed
3 request for information of the American answer, as
4 soon as such arrives. TOYODA did not comply with
5 my request to have the text of the message of KONOYE.

6 "TOYODA was during the conversation strongly
7 reserved as it suits his nature. As I hear, the
8 expediency of the message of KONOYE is lively
9 discussed in the army and circles. Although in view
10 of the attitude of the KONOYE cabinet one expected
11 attempts to establish, if only temporarily, modus
12 vivendi with the U.S.A. the news of a message of the
13 Premier Minister to Roosevelt came unexpectedly.
14 The publicity given to this step in the American
15 press reflected here painfully and also left in the
16 governmental circle an uncertain feeling, that pos-
17 sibly a different than the hoped for reaction might
18 ensue. The government is endeavoring to keep the
19 treatment of this matter in the press within a
20 limited scope.

21 "(Signed) Ott"
22
23
24
25

1 I now offer in evidence an excerpt from
2 "Hearings before the Joint Committee on the Investi-
3 gation of the Pearl Harbor Attack," part 33, pages
4 1363-1364, an intercepted Japanese message from
5 Berlin to Tokyo, dated 1 October 1941, to show that
6 the German leaders were deeply suspicious of
7 Japanese attitude in connection with the negotiations
8 with the United States, and Japanese-German rela-
9 tions were very much strained at that time.

10 The parent document is tendered for identi-
11 fication.

12 CLERK OF THE COURT: Defense document
13 No. 1500, being the volume entitled, "Pearl
14 Harbour Attack," will receive exhibit No. 2761 for
15 identification only.

16 (Whereupon, the document above
17 referred to was marked defense exhibit
18 No. 2761 for identification only.)

19 MR. CUNNINGHAM: I offer in evidence defense
20 document 1676 as an excerpt from that volume.

21 THE PRESIDENT: Brigadier Nolan.

22 BRIGADIER NOLAN: May it please the
23 Tribunal, we object to this document on the ground
24 that there is nothing upon it to indicate by whom
25 or to whom it was sent, and we submit that these

1 are matters about which the Tribunal should be in-
2 formed.

3 MR. CUNNINGHAM: Well, your Honor, it
4 indicates that it was from Berlin to Tokyo, and
5 certainly the subject matter, Tri-Partite Pact and
6 other documents, indicates that it was an official
7 document which was intercepted, and naturally signa-
8 tures are not attached to intercepted messages; and
9 I submit that you have already accepted intercepted
10 messages, unsigned as I understand it, from the
11 prosecution, which should alleviate any objection
12 on that. I refer to 802 and 803A.

13 THE PRESIDENT: They were messages I
14 recollect, I think, intended for the Envoys KURIOSU
15 and NOMURA.

16 MR. CUNNINGHAM: I can tell you here in
17 just a second who they were from and who they were
18 to, but it is apparent that this was from the German
19 Foreign Office to the German Ambassador here in
20 Tokyo.

21 I have the information here. Exhibit 802
22 was an intercepted message from TOGO to OSHIMA; 802A
23 was from TOYODA to OSHIMA, but they were unsigned.

24 THE PRESIDENT: At all events, we know the
25 individuals to whom they were addressed. Here we

1 just have from Berlin to Tokyo.

2 MR. CUNNINGHAM: This is from OSHIMA to
3 TOYODA.

4 THE PRESIDENT: It does not appear so on
5 the face of the document.

6 Brigadier Nolan.

7 BRIGADIER NOLAN: If that explanation is
8 acceptable to the Tribunal we will withdraw our
9 objection.

10 THE PRESIDENT: Well, you should satisfy
11 yourself, Brigadier Nolan, and not leave it to us
12 to make a determination of fact unassisted. The
13 only question is, who was the addressee.

14 BRIGADIER NOLAN: We are satisfied, sir,
15 that the information is correct.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document 1676
18 will receive exhibit No. 2761A.

19 (Whereupon, the document above
20 referred to was marked defense exhibit
21 No. 2761A and received in evidence.)

22 MR. CUNNINGHAM: I now read from exhibit
23 2716A, skipping the formal parts at the top:

24 "From: Berlin.

25 "To: Tokyo.

1 "1 October 1941.

2 "On this the occasion of the first anni-
3 versary of the Tri-Partite Pact, Foreign Minister
4 Ribbentrop has come to Berlin from the Imperial
5 Headquarters especially and I have had several
6 visits with him. Using this opportunity I, and the
7 other members of the staff, have mingled with people
8 from all classes of society and visited with them.
9 I am endeavoring to sum up all these experiences
10 and analyze the present state of feeling toward
11 Japan held by Germany in this report to you.

12 "1. Ribbentrop said that he had absolute
13 proof that, while reports of the content of the
14 Japanese-American negotiations were withheld from
15 Ambassador Ott, America was in secret communication
16 with England in regard to the Japanese-American
17 negotiations. Even Ribbentrop, who is supposed to
18 understand Japan's position, expressed great dis-
19 satisfaction on regarding Japan's attitude.
20

21 "2. That the Foreign Office staff from
22 Weizsacker down and also everyone in general were
23 thoroughly disgusted with Japan was very apparent
24 from their attitude toward myself and other members
25 of the staff. Everyone who feels kindly disposed
toward Japan is deeply concerned over this state of

1 affairs. Even those who do not come to the same
2 conclusion that Ambassador Ott did in his telegram
3 are outspoken in their dissatisfaction and expression
4 of pessimistic views.

5 "I am trying to take the position in
6 interviews with newspaper correspondents and others
7 concerned with the outside that Germany is cog-
8 nizant of the Japanese-American negotiations and
9 that they are no indication of an alienation between
10 Japan and Germany.

11 "3. Foreign diplomats and newspaper
12 correspondents of third countries show great in-
13 terest in the Japanese attitude and seem to con-
14 sider it in a certain sense as a barometer by which
15 the course of the European war can be judged.
16 However, we receive the impression that the greater
17 number feel that Japan is avoiding war because of
18 the impoverishment resulting from the China inci-
19 dent and is taking a pessimistic attitude toward
20 the course of the European war.

21 "4. Even though it might be said that
22 Germany is prepared for these machinations of
23 estrangement by third countries and that she is
24 keeping up the pretense that there is no change
25 in her feelings toward Japan, the fact that the

1 feeling of German leaders and the people in general
2 toward Japan is getting bad is one that cannot be
3 covered.

4 "Please bear this fact in mind. If Japan
5 takes a wishy-washy attitude and goes ahead with her
6 negotiations without consulting Germany there is no
7 telling what steps Germany may take without consult-
8 ing Japan.

9 "Please convey this to the army and navy.

10 "Relayed to Rome."

11 I now offer in evidence defense document
12 206 E(112), an excerpt from Ambassador Grew's book,
13 "Ten Years in Japan," which is his diary of 29 October
14 1941, to show that at the time when the TOJO
15 Cabinet was formed there was no close con-
16 tact between Japan and Germany and that this fact was
17 obvious to the American Ambassador in Japan.

18 THE PRESIDENT: Brigadier Nolan.

19 BRIGADIER NOLAN: May it please the Tribunal,
20 the document does not disclose the source of the in-
21 formation contained in the items in the document
22 other than to say "by members of another country's
23 mission in Tokyo." I submit that this is not sufficient
24 for the purposes of this Tribunal and that the docu-
25 ment should be rejected in its entirety.

1 MR. CUNNINGHAM: I do not wish to argue
2 the matter; I merely wish to read it if it is
3 considered of any value.

4 THE PRESIDENT: By a majority the Tribunal
5 sustains the objection and rejects the document.

6 MR. CUNNINGHAM: In order to show the lack
7 of any collaboration between Germany and Japan,
8 I would like to tender now defense document 1662,
9 the affidavit of von Ribbentrop, signed by him on
10 the 15th of October, 1946, the day before he was
11 executed.

12 THE PRESIDENT: Mr. Comyns Carr.

13 MR. COMYNS CARR: May it please the
14 Tribunal, the Tribunal has already rejected inter-
15 rogations of Ribbentrop and extracts from his
16 evidence before the Nuremberg Tribunal. While
17 this affidavit is, indeed, entitled, "In these
18 proceedings," it was taken under circumstances
19 which obviously preclude cross-examination, which
20 is invited by every line of it.
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1 THE PRESIDENT: Does it comply with the
2 essential requirements of a dying declaration? Can
3 we say that he had a settled, hopeless expectation
4 of death? Had the time for reprieve passed? We
5 can't treat it as a dying declaration unless certain
6 requirements have been met.

7 MR. COMYNS CARR: Your Honor, I am not quite
8 sure about the position with regard to that.

9 THE PRESIDENT: We don't want to exclude
10 these matters if we can possibly admit them, you
11 understand, but we want to be sure where we are.
12 My colleagues seem to think that at this stage he would
13 have known that he was to be executed. The absence
14 of cross-examination is not conclusive, of course, Mr.
15 Carr.

16 MR. COMYNS CARR: No, your Honor. It is
17 very much a matter of the desire of the Tribunal. If
18 the Tribunal feel they would like to have it read, I
19 shan't press the objection.

20 THE PRESIDENT: In the very special circum-
21 stances we overrule the objection and admit the docu-
22 ment on the usual terms.

23 CLERK OF THE COURT: Defense document 1662
24 will receive exhibit No. 2762.

25 (Whereupon, the document above referred

1 to was marked defense exhibit 2762 and received
2 in evidence.)

3 MR. CUNNINGHAM: I offer to read exhibit
4 2762 into the record.

5 "INTERNATIONAL MILITARY TRIBUNAL FOR THE
6 FAR EAST.

7 "THE UNITED STATES OF AMERICA et al.

8 -Against

9 "ARAKI, Sadao et al

10 "A F F I D A V I T

11 "I, Joachim V. RIBBENTROP, being sworn on
12 oath, do hereby depose and say that I was appointed by
13 the Fuehrer the Ambassador at Large and the Plenipo-
14 tentiary for Disarmament in April blank. Before that
15 time I was a foreign political advisor to Hitler in
16 non-official capacity. I was the German Ambassador to
17 Great Britain from the summer of 1936 to 4 February
18 1938, when I was appointed the Foreign Minister of
19 Germany.

20 "I met OSHIMA, Hiroshi for the first time in
21 the summer of 1935. At that time OSHIMA was the
22 Japanese Military Attache in Berlin. Thereafter we
23 had several meetings at which German-Japanese relations
24 were discussed principally. When OSHIMA was appointed
25 the Ambassador to Germany in October 1938, I was the

1 Foreign Minister. He resigned his post and went home
2 in November 1939 and returned again as Ambassador in
3 February 1941.

4 "I. Anti-Comintern Pact

5 "The Anti-Comintern Pact was primarily an
6 ideological pact. We Germans did not want to let
7 Communism spread. Of course, there was also a politi-
8 cal weight against Soviet Russia that was more or less
9 the background of the pact. It is not true that this
10 pact was directed against the democratic countries of
11 the world. On the contrary. I tried hard after the
12 conclusion of the pact to get Great Britain to join it,
13 but was unsuccessful. I never had an impression that
14 Japan might use the pact in her policy toward China
15 or the South Sea area.

16 "II. China Incident

17 "When in 1937 the China Incident broke out,
18 I was in London and did not follow it very closely.
19 Afterwards, I tried repeatedly to settle the dispute.
20 I urged several times the Japanese to try to come to
21 terms with China; I contacted the Chinese Ambassador
22 in Berlin for that purpose. I remember also talking
23 quite frequently to OSHIMA about the attempts to make
24 peace with China, and OSHIMA showed a desire in the
25 same direction.

"III. German-Italian Military Alliance

1 "OSHIMA did not in any way contribute to the
2 German-Italian Military Alliance in 1939.

3 "IV. OSHIMA's Resignation

4 "OSHIMA resigned his post as Ambassador in
5 1939 after the Russo-German non-aggression pact was
6 signed. No special reason was given by him to me
7 officially for doing so.

8 "V. Tripartite Pact

9 "I can definitely say that our view in con-
10 cluding the Tripartite Pact was to keep the United
11 States out of the war. At the same time I may per-
12 haps point out that we always wanted to be friendly
13 with Japan. I wanted to get Russia to join the pact,
14 but I did not succeed.

15 "VI. German-British War

16 "In the early part of 1941 I urged OSHIMA
17 to ask that Japan go to war with Great Britain, but I
18 wanted it done in such a way as not to include the Uni-
19 ted States. This conversation was merely diplomatic
20 talking, but not planning. In Germany the right to
21 plan such things was only held by the Fuehrer. I my-
22 self could not plan. OSHIMA, of course, as Ambassador,
23 could do it still less than I.
24

25 "I cannot imagine that OSHIMA told me that

1 in February 1941 that the plan to attack Singapore
2 would be ready by the end of May 1941. In the first
3 place, OSHIMA would hardly have known. If OSHIMA had
4 known, he most certainly would not have told me,
5 because the Japanese never tell such things. If this
6 was said it was for propaganda purposes and was not
7 proposed by OSHIMA.

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"VII. German-Russian War

1 "After the Russian war broke out, I
2
3 tried to get Japan against Soviet Russia. I told
4 OSHIMA that it would be most useful if Japan would
5 go against Soviet Russia. Judging from the attitude
6 of OSHIMA and the Japanese Government, I got the
7 impression that Japan did everything possible to
8 keep out of the conflict with Soviet Russia and to
9 keep from antagonizing Soviet Russia in any way.

10 "VIII. Pearl Harbor

11 "Neither I nor OSHIMA had any advance
12 notice of the Japanese attack on Pearl Harbor.
13 It came as a complete surprise to all of us. We
14 learned about it through the radio. It was such a
15 surprise that it was hard to believe. OSHIMA
16 gave me the very clear impression that it was a
17 complete surprise and he told me so. For diplomatic
18 reasons we had to express our pleasure about the
19 event. This feeling was not genuine.

20 "OSHIMA had no part in the decision of
21 Hitler to declare war on the United States. Hitler
22 considered that a virtual state of war existed
23 between the United States and Germany since President
24 Roosevelt's Navy Day speech in which he ordered
25 the United States Navy to 'shoot on sight'.

1 "IX. U-Boat Warfare

2 "On the occasion of the transfer of the
3 two U-Boats from Germany to Japan in 1943 no
4 operation program was agreed upon between the two
5 countries, and OSHIMA never handled the transfer.
6 It was conducted through the Navy channel. OSHIMA
7 neither considered nor subscribed in any way that
8 shipwrecked crews be killed. Such a matter was,
9 as not belonging to the diplomatic field, never
10 discussed between us.

11 "X. Relation Between Germany and Japan

12 "The relation of Germany with Japan was
13 never very close. Japan was very far away and we
14 never were really aware of everything which was
15 going on over there.

16 "So far as I became aware of the relation-
17 ship between German and Japanese forces during the
18 war I believe that little or no collaboration was
19 practical or possible; at least none existed so
20 far as I know. When General Marshall said that there
21 was no actual collaboration between Germany and
22 Japan, it is exact.

23 "XI. Miscellaneous

24 "No agreement was ever suggested between
25 OSHIMA and me concerning division of spoils of the

1 war. Such matters are completely beyond the pale
2 of all diplomatic discussions.

3 "It has been charged that Japan and Germany,
4 together with Italy, planned to dominate the world.
5 Such a claim is as ridiculous as it is untrue, because
6 such a thing has never been dreamed of by the three
7 Powers.

8 "/S/ Joachim V. Ribbentrop

9 "Sworn to and subscribed by the above-
10 named Ribbentrop, Joachim V. before the undersigned
11 officer at Nurnberg Germany 15 October 46

12 "/S/ Robert B. Starnes

13 "Captain Infantry O-1284783."

14 I should like to read the certificate into
15 the record.

16 "OFFICE OF THE GENERAL SECRETARY

17 "October 18, 1946

18 "Mr. Owen Cunningham

19 "Hq. GHQ SCAP IMTFE

20 "APO 500

21 "c/o Postmaster

22 "San Francisco, California

23 "Dear Sir:

24 "Inclosed find one signed copy of affidavit
25 of Ribbentrop with annotations initialed by Ribbentrop.

1 "It may interest you to know that this
2 affidavit was received and accomplished the day
3 before the execution.

4 "Respectfully,

5 "JOHN E. RAY

6 "Colonel, FA

7 "General Secretary"

8 The last group of documents will now be
9 produced for the purpose of showing that the Pearl
10 Harbor attack was a complete surprise to Germany,
11 that the German declaration of war against the
12 United States was not connected with the Tri-Partite
13 Pact, and that collaboration between Japan and
14 Germany during the war was almost non-existent.

15 THE PRESIDENT: Mr. Cunningham, would you
16 care to disclose by whom and upon what information
17 Ribbentrop's affidavit was drawn?

18 MR. CUNNINGHAM: Yes, your Honor. I left
19 Tokyo on the 7th of August 1946 and arrived in
20 Nuernberg on the 20th of August, I think, and I had
21 a conference, three-hour conference, with Ribbentrop
22 on the evening of the 27th, I believe, and took a
23 40-page transcript. And then, I returned to Tokyo
24 and arrived here on the 17th of September, and on
25 the 10th or 12th, or on the 5th or 8th, I mailed

1 this affidavit, which was prepared by me here from
2 the information received from Mr. Ribbentrop, to him
3 and it was accomplished there.

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 (Whereupon, at 1445, a recess
7 was taken until 1500, after which the
8 proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Cunningham.

4 MR. CUNNINGHAM: If your Honors please, I now
5 offer in evidence defense document 1450, an excerpt
6 from the transcript of the Nuernberg trial on 28
7 March 1946, which is part of the direct examination
8 of the witness Paul Schmidt, to show that the Pearl
9 Harbor attack was a complete surprise to the German
10 Government. The parent document, the official tran-
11 script of the Nuernberg trial for the 28th of March,
12 1946, is tendered for identification. I only propose
13 to read the last question and answer on page 2 and the
14 top of page 3.

15 THE PRESIDENT: Mr. Comyns Carr.

16 MR. COMYNS CARR: May it please the Tribunal,
17 the Tribunal has already ruled against other excerpts
18 from the testimony given at Nuernberg. In this par-
19 ticular case, there is the distinction, which appears
20 to us to make it worse, that Dr. Paul Schmidt is alive
21 and could have sworn an affidavit and been brought here
22 for cross-examination if desired.

23 THE PRESIDENT: Well, he was not an accused
24 at Nuernberg.

25 MR. COMYNS CARR: No. .

1 THE PRESIDENT: And, if you want him cross-
2 examined, you can apply to have him brought here.

3 MR. COMYNS CARR: I was going to add, your
4 Honor, that the matter appears to us in any event to
5 be irrelevant whether Ribbentrop was or was not sur-
6 prised on hearing the news of Pearl Harbor.

7 THE PRESIDENT: Surprise can always be feigned,
8 but this man may have known Ribbentrop's mind. It all
9 depends.

10 MR. COMYNS CARR: I was not on the question of
11 whether surprise was feigned or not but on the question
12 of whether it mattered whether he was surprised or not.

13 THE PRESIDENT: Well, if he did not know that
14 Pearl Harbor was to take place, or that the attack was
15 to take place, it shows that the cooperation was not as
16 great as the prosecution is alleging.

17 MR. COMYNS CARR: Your Honor, I was just going
18 to add that he knew this attack upon the United States
19 was going to take place is clear from exhibit 608. He
20 may well not have known it was not going to take place
21 at Pearl Harbor.

22 THE PRESIDENT: Well, we will have to weigh one
23 document against the other if we admit this.

24 MR. COMYNS CARR: This document does not say
25 that he was surprised at an attack upon the United

1 States. It merely says he was surprised at the news
2 of Pearl Harbor. It is a very different thing.

3 THE PRESIDENT: Well, if there is some doubt
4 about it, we ought to give the defense the benefit of
5 it.

6 The objection is overruled and the document
7 is admitted to the extent indicated by Mr. Cunningham,
8 the last question and answer.

9 CLERK OF THE COURT: Defense document 1450,
10 a transcript of the International Tribunal at Nuernberg
11 for March 28, 1946, will receive exhibit No. 2763 for
12 identification only. The excerpt therefrom, bearing
13 the same document number, will receive defense exhibit
14 No. 2763-A.

15 (Whereupon, the document above re-
16 ferred to was marked defense exhibit No. 2763
17 for identification, the excerpt therefrom being
18 marked defense exhibit No. 2763-A and received
19 in evidence.)

20 MR. CUNNINGHAM: I now offer to read from
21 exhibit No. 2763-A, on page 2, the last question and
22 answer:

23 "Q Witness, did you have an opportunity to ob-
24 serve just how Ribbentrop reacted to the news that
25 Japan had attacked Pearl Harbor?

"A I didn't have a direct opportunity, no, but
1 the Foreign Office knew generally that the Foreign/
2 Minister, just like the whole Foreign Office, was
3 completely surprised by the news of Pearl Harbor. As
4 far as I am concerned, that impression was confirmed
5 by news regarding a member of the press section. The
6 press section had department concerning itself with
7 radio news, and in the case of important news, the
8 official on duty had orders to inform the Foreign
9 Minister personally and at once. When the first news
10 regarding Pearl Harbor was received by that section of
11 the press, the official on duty considered it important
12 enough to report to his chief, that is to say, the
13 chief of the press section, who in turn intended to
14 pass it on to the Foreign Minister. But, as I was told,
15 the Foreign Minister turned him down rather harshly
16 and he said that that was surely some invention of the
17 press or some 'red herring,' and that he didn't wish
18 to be disturbed by our press section with stories like
19 that.
20

21 "After that, a second and third new bulletin
22 regarding Pearl Harbor was received, I think a Reuter
23 report, and that had been received by that department.
24 At the stage the chief of the press section gathered
25 his courage together, in spite of the order not to

1 disturb the Foreign Minister, and informed him of this
2 news."

3 I now offer in evidence defense document 1642,
4 the German note of declaration of war on the United
5 States, dated the 12th of December, 1941, to show that
6 the German declaration of war, according to this note,
7 was not related to the Tri-Partite Pact.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Defense document 1642
10 will receive exhibit No. 2764.

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit No. 2764
13 and received in evidence.)

14 MR. CUNNINGHAM: I now offer to read exhibit
15 2764:
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1 "Note of 11 December 1941. Handed by the
2 German Foreign Minister to the American Charge d'Affaire
3 prior to the session of the Diet.

4 "Mr. Charge d'Affaires:

5 "After the Government of the United States of
6 America, since the outbreak of the European war called
7 into being by the English declaration of war to Germany
8 of 3 September 1939, had violated most flagrantly all
9 rules of neutrality in a steadily increasing degree
10 in favour of the enemies of Germany, and committed con-
11 tinuously gravest provocations against Germany, it went
12 over to open military aggressive actions.

13 "On 11 September 1941 the President of the
14 United States of America declared publicly that he had
15 given an order to the American fleet and air forces
16 to shoot on sight any German warship. In his speech
17 of 27 October of this year he again confirmed emphat-
18 ically that this order was effective.

19 "According to this order American warships
20 since the beginning of September systematically attacked
21 German naval forces. So the American destroyers, for
22 instance the Greer, the Kearney and the Reuben James,
23 opened fire deliberately on German U-boats. The
24 Secretary of the American Navy, Mr. Knox, himself
25 confirmed that American destroyers attacked German

1 U-boats.

2 "Furthermore the naval forces of the United
3 States of America, upon order of their government,
4 treated and captured German merchant ships on the open
5 sea as enemy ships contrary to the international law.

6 "The German Government therefore recognizes
7 the following fact:

8 "Notwithstanding Germany on her side observed
9 strictly towards the United States of America during
10 the whole present war the rules of international law,
11 the government of the United States of America went
12 over from the violations of neutrality in the beginning
13 to ultimately open war actions against Germany. It
14 has thereby practically created the state of war.

15 "The German Government therefore severs the
16 diplomatic relations with the United States of America
17 and declares that Germany under these circumstances
18 caused by President Roosevelt considers herself also
19 from today as being in the state of war with the United
20 States of America.

21 "Allow you, Mr. Charge d'Affaire, the expres-
22 sion of my regards.

23 "Ribbentrop"
24
25

1 Now, your Honors, as my last document on this
2 phase of the case, I offer in evidence defense docu-
3 ment No. 1674, which is an excerpt from General
4 Marshall's Report "The Winning of the War in Europe
5 and the Pacific," for identification, and tender the
6 excerpt therefrom as evidence, to show that the military
7 authority on the allied side came to a conclusion that
8 there was no close strategic collaboration, to say
9 nothing of an unified strategic plan, between Japan,
10 Germany and Italy, a fact which contributed much to
11 the victory of the Allies.

12 THE PRESIDENT: Admitted on the usual terms.

13 MR. CUNNINGHAM: I only want to read from
14 the middle of the page down to the end.

15 CLERK OF THE COURT: Defense document 1674,
16 a volume entitled "The Winning of the War in Europe
17 and the Pacific," by General Marshall, will receive
18 exhibit No. 2765 for identification only, the excerpt
19 therefrom bearing the same number will receive exhibit
20 No. 2765A.

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 2765 for identification, the excerpt
24 therefrom being marked defense exhibit
25 No. 2765A and received in evidence.)

 MR. CUNNINGHAM: I now read from exhibit

1 2765A starting with:

2 "Nor is there evidence of close strategic
3 coordination between Germany and Japan. The German
4 General Staff recognized that Japan was bound by the
5 neutrality pact with Russia but hoped that the
6 Japanese would tie down strong British and American
7 land, sea and air forces in the Far East.

8 "In the absence of any evidence so far to the
9 contrary, it is believed that Japan also acted uni-
10 laterally and not in accordance with a unified
11 strategic plan."

12 THE PRESIDENT: Are we to take even General
13 Marshall's opinion? However, the document is not
14 objected to.

15 MR. CUNNINGHAM: With the exception of a few
16 witnesses whose affidavits were not prepared in time
17 for presentation, and with the exception of the docu-
18 ment which had so many annexes and so on which will
19 have to be arranged and presented later, that concludes
20 my presentation of evidence in this phase of the case.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: May it please the Tribunal,
23 with reference to exhibit 2762, the affidavit of
24 Ribbentrop, I am reminded that I should have called
25 the attention of the Tribunal to the fact that the

1 other day two affidavits by Russian witnesses,
2 Rodzievski and Semyonov, the Tribunal announced its
3 decision to disregard those affidavits. We are not
4 sure how far that decision was governed by the fact
5 that those witnesses had been executed before they
6 could appear for cross-examination, but if that was
7 the governing consideration we would ask that Ribbentrop's
8 affidavit be treated on the same basis as those two
9 affidavits.

10 THE PRESIDENT: There is this vast distinction.
11 Ribbentrop's affidavit was established to our satis-
12 faction as a declaration made at the point of death
13 and with the hopeless expectation of death. There
14 was no proof before us that when these witnesses to
15 whom you refer made their affidavits they knew they
16 were going to die. They may then have been sentenced.
17 We don't know. Even if they were under sentence, we
18 have no evidence one way or the other as to whether
19 they might anticipate a reprieve. The possibility
20 of a reprieve was precluded in Ribbentrop's case.

21 I have no more to say about this evidence.
22 I must consult my colleagues. But I can make that
23 statement because it is a fact beyond all question.
24

25 Do I understand, from you, Mr. Cunningham,
that you are not prepared to go ahead tomorrow?

1 MR. CUNNINGHAM: Your Honor, I think that the
2 balance of the defense is prepared to start after the
3 recess.

4 THE PRESIDENT: Well, we will adjourn now
5 until 0930 -- Mr. Carr.

6 MR. COMYNS CARR: Your Honor, there is one
7 other matter I wanted to mention before the Tribunal
8 adjourned.

9 Some days ago Mr. Furness raised a question
10 to an observation of mine with regard to the accused
11 SHIGEMITSU which I was not then able to deal with.
12 I have investigated it now and I find he was quite
13 right. SHIGEMITSU was not decorated for services in
14 connection with the Anti-Comintern Pact. The mistake
15 arose owing to a confusion between SHIGEMITSU and
16 SHIRADA, who was.

17 THE PRESIDENT: Mr. Tavenner.

18 MR. TAVENNER: If the Tribunal please, I think
19 it is advisable that there be no uncertainty on the
20 situation regarding the completion of the Tri-Partite
21 phase of the defense case.

22 THE PRESIDENT: Well, it isn't complete.
23 There are some rag ends, if I may call them so. Have
24 you any suggestion, Mr. Tavenner?

25 MR. TAVENNER: The statement by counsel was

1 of such a general character that I thought it should
2 be made more specific.

3 THE PRESIDENT: Well, I take it there will
4 be very little to finish it.

5 MR. CUNNINGHAM: I have been handed a note,
6 your Honor. The SAITO affidavit, and MATSUMOTO
7 affidavit, and document 1656 is all we know now that
8 will be tendered, and I believe that completes the
9 presentation of that phase of the case.

10 MR. TAVENNER: That answers my question.

11 At page 24,504 of the transcript I introduced
12 exhibit 2746 which is a statement by Stahmer. I
13 served it upon the defense counsel, and I have the
14 required copies for the Tribunal now.

15 THE PRESIDENT: Circulate them, please.

16 MR. TAVENNER: That is all, your Honor.

17 THE PRESIDENT: Does any other counsel desire
18 to address the Court before we adjourn?

19 (There was no response)

20 THE PRESIDENT: We will adjourn until half
21 past nine on Monday morning, the 4th of August, next.

22 (Whereupon, at 1530, an adjournment
23 was taken until Monday, 4 August 1946, at
24 0930.)
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